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Friday
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Briefings on How To Use the Federal Register—
For information on briefings in Atlanta, GA, and Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

ATLANTA, GA

WHEN: March 26; at 9 am.
WHERE: L.D. Strom Auditorium, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, GA.
RESERVATIONS: Call the Atlanta Federal Information Center, 404–331–2170.

WASHINGTON, DC

WHEN: March 31; at 9 am.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Beverly Fayson, 202–523–3517

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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.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Parts 57 and 68

U.S. Standards for Hay and Straw

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: According to the requirements for the periodic review of existing regulations, the Federal Grain Inspection Service (FGIS) has reviewed the U.S. Standards for Hay and Straw. Pursuant to this review, FGIS is removing these standards from the regulations, and official services will no longer be performed for these agricultural commodities. The hay and straw standards are authorized by the Agricultural Marketing Act of 1946 (the Act); however, inspection programs no longer meet the objectives of the Act. Therefore, the programs will be terminated and applicable provisions of the regulations removed.

EFFECTIVE DATE: March 14, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, RM, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: The U.S. Standards for Hay and Straw were established under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.). Pursuant to section 203(c) of the Act (7 U.S.C. 1622(c)), the Administrator is authorized to develop and improve standards for all assigned agricultural commodities.

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulations 1512–1. The action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

D.R. Galliart, Acting Administrator, FGIS has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most potential users of hay and straw inspection services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the requests for official services for hay and straw have declined over the years to an average of less than 50 requests per year, the majority of which are requested by an agency within USDA. After removal of the hay and straw standards from the regulations, users of official inspection services can in the alternative, request services, as has been the recent trend, from available state programs or commercial laboratories.

Final Action

The review of the standards included a determination of whether the standards facilitate the marketing of hay and straw. A proposed rule to remove the U.S. Standards for Hay and Straw from the regulations was published in the November 5, 1986, **Federal Register** (51 FR 40174), and comments were solicited during a 60-day period.

The U.S. Standards for Hay (7 CFR Part 57, Subpart A, §§ 57.1 through 57.13) and the U.S. Standards for Straw (7 CFR Part 57, Subpart B, §§ 57.50 through 57.52) were established in 1925 and 1933, respectively. Hay and Straw inspection are authorized by the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627). Pursuant to that Act, the Secretary is authorized to provide for the inspection of certain agricultural products or commodities, including hay and straw. The program is a voluntary program. The regulations for inspection and certification of certain agricultural commodities and the products of, including hay and straw, appear in Subpart A of Part 68 (7 CFR 68.1 through 68.54). Removal of the hay and straw standards from the regulations requires a revision to Subpart A of Part 68. Section 68.42a, *Fees for Certain Federal Inspection Services* will be revised to remove references to hay and straw fees. The hay and straw standards were used frequently until the early 1950's, but the number of official inspections has declined appreciably since that time. The highest number of official inspections occurred in fiscal year 1946, when 25,067 hay and straw inspections were performed. During the last decade, less than 50 official inspections were performed in most years which raises concerns regarding the continued effectiveness and viability of the hay and straw program.

The decrease in the number of official hay and straw inspections has primarily resulted from a decline in the purchase of these commodities by various government installations. Prior to World War II about half of the hay and straw which was officially inspected was used by the U.S. Army for horses and mules. Following that period, use of these animals began to decline as did requests for hay and straw inspections. The majority of recent inspections has been for hay and straw purchased by the USDA, Agricultural Research Center, Beltsville, Maryland.

The absence of objective grading factors has been suggested as another reason for minimal use of the hay standards. Forage researchers, in particular, have expressed concern regarding the current subjective grading factors; and in their opinion such factors are poor measurements of quality, especially for feed value. Objective analyses, such as protein and fiber content, are considered to be more accurate indicators of nutrient content for balancing a livestock ration.

Within the 60-day comment period, three written comments were received on the hay and straw standards. Two comments were from state departments of agriculture and one comment was from a state farm bureau federation. Two of the commenters opposed removal of the standards from the regulations while one commenter supported the proposal.

One of the commenters from a State Department of Agriculture of a major hay producing state indicated that the current U.S. Standards for Hay and Straw do not facilitate trading of these commodities and the program does not meet the objectives of hay and straw marketing.

The commenter from the other State Department of Agriculture stated that the official standards should be retained to solve disputes involving quality determination. The commenter indicated that unofficial inspection would dilute quality standards already perceived as subjective, and official standards should be retained and strengthened by objective testing procedures.

In the mid-to late-1970's and early-1980's, FGIS studied the possibility of revising the hay standards to incorporate objective testing procedures as grading factors. Near Infrared Reflectance (NIR) instrumentation was the testing method of choice for the objective determinations. However, NIR analysis was not possible since calibration equations had not been developed for testing the major types of hay on a nationwide basis. In addition, installation of NIR equipment, for analysis of hay across the country would cause increases in program costs which, in our view, would require increases in inspection fees.

Discussion with the hay and straw industry during the study of objective procedures also indicated that a revision of the hay and straw standards would not be supported. Most industry members have stressed that official inspection is not necessary to facilitate trading of these commodities and is seldom used to settle disputes over quality.

The commenter from the state farm bureau federation stated that the standards provide a recognized base for quality. Elimination of the standards would result in confusion; therefore, the standards should be retained, especially since the cost is minimal or nonexistent. Since the number of requests for official inspection of hay and straw is small, FGIS does not believe that elimination of the standards would result in confusion in the market. Cooperating states currently inspecting hay and straw may continue their programs under state authorities, as applicable. Also, private inspection agencies may initiate inspection services for these commodities.

In addition to possible inspection agency programs, the American Forage and Grassland Council/National Hay Association, Alfalfa Hay Testing Association is approving and monitoring commercial laboratories for uniform, accurate alfalfa hay testing. Seventy to eighty laboratories currently participate in this program on a nationwide scale and additional laboratories are expected to be approved in the near future.

Although the cost of retaining the standards would not be excessive, some expenditure would be required. Retention of the hay and straw standards would necessitate a periodic review of the standards. Also, qualified hay and straw inspectors would have to be maintained which is not cost-free and is difficult to accomplish when the official system is seldom used.

For these reasons, the Service has determined that the official inspection, certification, and identification of the class, quality, quantity, and condition of hay and straw does not facilitate trading of these commodities and that the programs do not meet the objectives of the Act. FGIS is, therefore, removing the U.S. Standards for Hay and the U.S. Standards for Straw as official standards from the regulations under the Agricultural Marketing Act of 1946. In addition, the fees relating to the inspection of hay and straw are removed from 7 CFR Part 68.

List of Subjects

7 CFR Part 57

Hay, Straw, Exports.

7 CFR Part 68

Administrative practices, agricultural commodities, Exports.

PART 57—[REMOVED]

1. Accordingly, Part 57, *United States Standards for Hay and Straw*, is removed.

PART 68—[AMENDED]

2. The authority citation for Part 68 continues to read as follows:

Authority: Pub. L. 79–333, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

3. 7 CFR Part 68, Subpart A, § 68.42a is amended by revising the section heading and Table 2 to read as follows:

68.42a Fees for certain Federal inspection services.

* * * * *

Fees for Inspection of Hops, Pulses, and Miscellaneous Processed Commodities

* * * * *

TABLE 2.—UNIT RATES

Service [1]	Bean, pea, lentil	Hops	Non-graded, non-processed commodities
Lot or sample (per lot or sample)		$22.40	
Field run (per lot or sample)	$15.00		
Other than field run (per lot or sample)	11.20		
Factor analysis (per factor)	3.75		$3.75
Extra Copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeal) for kind, class, grade, factor analysis, and any other quality designation as defined in the official U.S. Standards or applicable instructions when performed at other than the point of service.

* * * * *

Dated: February 20, 1987.

D.R. Galliart,

Acting Administrator.

[FR Doc. 87–5256 Filed 3–12–87; 8:45 am]

BILLING CODE 3410–EN–M

Federal Crop Insurance Corporation

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

[Docket No. 4158S]

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

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of Extension of Prevented Planting Insurance Dates.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of the change of dates when prevented planting insurance attaches; the sales closing date for filing application for prevented planting; and extension of the date for reporting intended acreage for application purposes to the sales closing date for the applicable qualifying crop, effective for the 1987 crop year only. The regulations affected by this notice are contained in 7 CFR Parts 419, 432, 421, 448, 420, 427, 424, and 418, respectively. The intended effect of this rule is to: (1) Advise all interested parties that FCIC intends to use the sales closing date of the qualifying crop insurance policy as a

specific point of reference with respect to filing the intended acreage reporting date in conjunction with the application for a prevented planting endorsement, and for the purposes of determining when insurance attaches.

The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: March 13, 1987.

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

SUPPLEMENTARY INFORMATION: In accordance with the provisions applicable to coverage under a prevented planting endorsement, an intended acreage report, filed in conjunction with an application for prevented planting, must be filed by a date established on the actuarial table. Under these same provisions, insurance attaches 45 days prior to the sales closing date for the qualifing crop. Such dates are determined by FCIC to be inconsistent with the normal planting time for barley, corn, cotton, ELS cotton, grain sorghum, oat, rice, and wheat.

For this reason, and to reduce the burden imposed on insureds with respect to estimating planting intentions, effective for the 1987 crop year only, FCIC has determined to make prevented planting more accessible to producers, consistent with the spirit of the Food Security Act of 1985, and to enhance the ability of producers to obtain prevented planting insurance. Because many producers have not yet made their plans for the 1987 crop year to obtain prevented planting protection by the time required under the present rule (45 days prior to sales closing date for the qualifying crop), the Manager of FCIC has determined to: (1) Allow eligible producers until the sales closing date for the qualifying crop to apply for prevented planting insurance; (2) permit eligible producers until the sales closing date for the qualifying crop to file an intended acreage report for application purposes; and (3) change the beginning of the insurance period to coincide with either 45 days prior to the sales closing date for the qualifying crop or the date of the application, whichever is later, but in no event, no later than the sales closing date for the qualifying crop.

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 herewith gives notice that, effective for the 1987 crop year only, the sales closing date for accepting applications for a prevented planting endorsement; the date for filing intended acreage reports for the purposes of such applications; and the date on which insurance shall begin on 1987 spring-planted qualifying insured crops of barley, corn, cotton, ELS cotton, grain sorghum, oat, rice, and wheat (7 CFR Parts 419, 432, 421, 448, 420, 427, 424, and 418, respectively), shall be not later than the sales closing date for the qualifying crop.

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

Done in Washington, DC on March 5, 1987.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–5445 Filed 3–12–87; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 651]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 651 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period March 13, 1987, through March 19, 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 651 (§ 907.951) is effective for the period March 13, 1987, through March 19, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5697.

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

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

The purpose of the RFA is to fit regulatory 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 status have small entity orientation and compatibility.

This rule 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 California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is 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 met publicly on March 10, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by an 8 to 3 vote a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges has improved.

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 regulation 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 Subject in 7 CFR Part 907

Agricultural Marketing Service, Marketing agreement 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 907.951 Navel Orange Regulation 651 is added to read as follows:

§ 907.951 Navel Orange Regulation 651.

The quantities of navel oranges grown in California and Arizona which may be handled during the period March 13, 1987, through March 19, 1987, are established as follows:

(a) District 1: 1,859,408 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: March 11, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87-5632 Filed 3-12-87; 9:02 am]

BILLING CODE 3410-02-M

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7 CFR Part 908

[Valencia Orange Regulation 380]

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

AGENCY: Agricultral Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulations 380 establishes the quantity of California-Arizona Valencia oranges that may be shipped to market during the period March 13–19, 1987. The regulation is needed to balance the supply of fresh Valencia oranges with market demanded for the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 380 (§ 908.680) is effective for the period March 13–19, 1987. Comments due April 13, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning the possible impact of volume regulations on small entities. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular working hours.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447-5697.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 15–12–1 and Executive Order 12291 and has been designated a "non-major" rule under criteria contained therein.

At the beginning of each marketing year, the Valencia Orange Administrative Committee (VOAC) submits a marketing policy to the Department which discusses, among other things, the potential use of volume and/or size regulations for the ensuing season. The committee's 1986–87 marketing policy contemplated the use of volume regulation this season. The Department reviewed that policy with respect to legal and administrative requirements and regulatory alternatives, in order to determine if the use of volume regulatons would be appropriate.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the AMS has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small business will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act", and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have have entity orientation and compatibility.

Valencia oranges regulated under Marketing Order No. 908 are grown in Arizona and designated parts of California. For marketing order purposes, the production area is divided into three districts: District 1, representing Central California; District 2, representing Southern California; and District 3, representing Arizona and the southeastern desert area of California. In recent seasons, District 1 has accounted for around 40 percent of total production, District 2 over 50 percent, and District 3 around 7 percent. The early VOAC crop estimate of 59,000 cars is expected to be allocated among the districts in relative amounts close to these approximated percentages.

The three basic outlets for California-Arizona Valencias are the demestic fresh, export, and processing markets. The domestic fresh market is fairly static, receiving around 23,000 cars per year unless unusual conditions such as poor quality and/or abnormal crop sizes exist. Quantities utilized in the export market have ranged from 9,208 cars to over 13,000 cars in the past five years. Exports vary depending on facts such as the foreign monetary exchange rate, quality, orange sizes, and trade practices. The processing market is basically a residual outlet. Valencia oranges not sold fresh are either disposed of or utilized for products, such as orange juice. Estimated crop utilization for the 1986–87 season is 22,000 cars for domestic fresh markets, 12,000 cars export, with the remaining 25,000 going to processed and other outlets.

There are an estimated 115 handlers and 3,500 growers of California-Arizona Valencia oranges. Regulations issued under Marketing Order No. 908 are imposed upon handlers, as this is the only point in the distribution process where implementing such regulations is feasible. The weekly shipping allotments imposed upon handlers are ultimately passed onto the individual growers. Therefore, the growers themselves are regulated and the effects of such regulation are realized by the producers as intended by the Act.

The Small Business Administration (SBA) has defined small entities as those producers having annual gross revenues for the past three years of $100,000 or less and those handlers with gross revenues of $3.5 million or less. Aggregate industry data indicate grower revenue has averaged about $45,000 over the past three years, and handler revenue has averaged about $1.7 million. Based on these figures, it appears the average grower and handler of California-Arizona Valencia oranges may be classified a small entities.

Volume regulations issued under the authority of the Act and Marketing Order No. 908 are intended to provide benefits to both producers and consumers. Producers allegedly benefit in areas such as increased grower returns and improved market conditions. Reduced fluctuations in supplies and prices result from pre-planned shipping levels, resulting in a more stable market. Consumers are assured of a steady supply of Valencia oranges in the market throughout the marketing season. The chance of market shortages and gluts is reduced, thereby reducing the corresponding wide fluctuations in prices.

The direct costs of implementing weekly volume regulations are primarily administrative in nature. The majority of these costs would likely be incurred regardless of whether volume regulation is issued for the coming season. Weekly industry (committee) meetings would likely continue to be held, data collection and dissemination would continue, and administrative staff would remain. These functions are necessary in case future recommendations for regulation are made. For example, weekly allotments are calculated based on prior weeks' shipments which

necessitates data collections. Perhaps reduced costs would be publication costs in the **Federal Register** and less time spent by USDA employees processing the weekly regulations.

Benefits and costs of issuing regulations are difficult to quantify, as indicated in various studies regarding effects of marketing orders and criteria for measuring the effects. However, based on the available information, it appears that the benefits of issuing volume regulations for the 1986–87 season would outweigh the direct costs. This applies to all entities regulated under the Valencia orange marketing, regardless of size. The AMS has determined that issuing regulations during the coming season will not adversely affect a substantial number of small entities, and has certified this finding with the Small Business Administration.

The Fruit and Vegetable Division of the AMS, however, encourage the submission of comments on economic impacts on small entities from all interested parties. The USDA's position on this certification of the regulatory action will be further evaluated in view of the applicable comments received.

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

The regulation is consistent with the marketing policy for 1986–87. The committee met publicly on March 10, 1987, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is poor.

It is further found that is is impracticable and contrary to the public interest is give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the Act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and the effective date.

List of subjects in 7 CFR Part 908

Agricultural Marketing Service, Marketing Agreements and Orders, Arizona, California, Oranges, Valencias,

PART 908—[AMENDED]

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

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

2. Section 908.680 is added to read as follows:

§ 908.680 Valencia Orange Regulations 380.

The quantities of Valencia oranges grown in Arizona and California which may be handled during the period March 13, 1987, through March 19, 1987, are established as follows:

(a) District 1: Unlimited cartons;
(b) District 2: Unlimited cartions;
(c) District 3: 104,109 cartons.

Dated: March 11, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87–5633 Filed 3–21–87; 9:02 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Requirements for Criminal History Checks; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule amending 10 CFR Part 73 with regard to the implementation of a program for the control and use of criminal history data received from the Federal Bureau of Investigation as part of criminal history checks of individuals granted unescorted access to nuclear power facilities or access to Safeguards Information by nuclear power reactor licensees. This final rule was published on March 2, 1987 (52 FR 6310). This action is necessary in order to make several minor typographical corrections.

FOR FURTHER INFORMATION CONTACT: Kristina Jamgochian, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–427–4754.

In FR Doc. 87–4436, published in the **Federal Register** of Monday, March 2, 1987, make the following corrections:

1. On page 6310, in the second column, in the second complete paragraph under the heading "Summary of Public Comment," beginning in the fourth line, remove the words that read "the date of publication of this notice." and insert in their place following the word "on", "April 1, 1987."

§ 73.57 [Corrected]

2. On page 6314, in the second column, in the third line of § 73.57(b)(1), the word "the" should read "this", and in the 27th line, the word "result" should read "results".

3. On page 6314, in the third column, in the third line of § 73.57(b)(5), the word "a" should read "an" and the word "permanent" should be removed.

4. On page 6315, in the third column, in § 73.57(f)(3)(ii), in the second line, the word "data" should read "date".

Dated at Washington, DC, this 9th day of March, 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 87–5457 Filed 3–12–87; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 87–215–B]

Regulation for Direct Investment By Insured Institutions

Dated: February 27, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Interim rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting an interim final amendment to its regulation governing investments by institutions the accounts of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, and operating subsidiaries ("direct investments"). On December 18, 1986, the Board issued an interim rule which amended this regulation, deferring the expiration of the rule from January 1, 1987 to March 15, 1987. Board Res. No. 86–1260, 51 FR 47061 (Dec. 30, 1986). Today's amendment defers the expiration of the rule from March 15, 1987 to April 15, 1987, in light of the

Board's adoption today of a final revised rule to become effective April 16, 1987. Board Res. No. 87–215.

EFFECTIVE DATE: March 15, 1987.

FOR FURTHER INFORMATION CONTACT: Christina M. Gattuso, Staff Attorney, (202) 377–6649, or Karen Knopp O'Konski, Deputy Director, (202) 377–7240, Regulations and Legislation Division, Office of General Counsel; or Joseph A. McKenzie, Director, Policy Analysis Division, (202) 377–6763, or Donald J. Bisenius, Financial Economist, (202) 377–6766, Office of Policy and Economic Research; Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On January 31, 1985, the Board adopted a new regulation governing direct investments by insured institutions. Board Res. No. 85–79–A, 50 FR 6912 (Feb. 19, 1985) (codified at 12 CFR 563.9–8) (hereinafter "current direct investment regulation"). The regulation created a process of supervisory review and approval by the Board's Principal Supervisory Agents ("PSAs") of certain types of direct investment and of aggregated direct investment above certain threshold amounts. The regulation includes qualitative criteria for investment by institutions in equity securities as well as diversification requirements applicable to investment in any one issuer of securities or in any one real estate project. The direct investment regulation was designed to allow institutions the flexibility to exercise their investment powers, as independently authorized by applicable law, in a manner that would expose neither the institutions themselves nor the FSLIC insurance fund to an unacceptable level of risk. At the same time, the Board sought to ensure that these institutions continued to fulfill their obligations to provide economical home financing.

Because of the complexity of the problems the rule sought to address, the Board believed it important to assess, after sufficient experience with the rule, whether the approach taken was effective in controlling risk and whether further regulatory action was required. 50 FR at 6927. Therefore, the direct investment rule was to expire on January 1, 1987 by its own terms.

On September 11, 1986, the Board proposed to amend the direct investment rule to defer its expiration from January 1, 1987 to January 1, 1989. Board Res. No. 86–962, 51 FR 32925 (Sept. 17, 1986) (hereinafter "September proposal"). The comment period for this proposal ended on October 17, 1986.

On December 18, 1986, the Board adopted an interim amendment to its regulation governing direct investments that deferred the expiration of the rule from January 1, 1987 to March 15, 1987. Board Res. No. 86–1260, 51 FR 47061 (Dec. 30, 1986). The Board also voted to reopen the comment period on the September proposal through February 6, 1987, and to hold a two-day public hearing to receive oral comments on this proposal. Board Res. No. 86–1291, 52 FR 80 (Jan. 2, 1987). The interim amendment deferred the rule's expiration date in order to provide the Board with sufficient time to more thoroughly evaluate the September proposal. On February 2, 1987, the Board again extended the comment period for the September 1986 proposal from February 6, 1987 through February 13, 1987. Board Res. No. 87–114, 52 FR 3669 (Feb. 5, 1987).

In response to the September 1986 proposal, the Board received a total of 155 comments from the public, including written statements submitted at the January public hearing. These comments were received from insured institutions, economic consultants, industry trade associations, law firms, state banking and legislative authorities, public interest groups, and members of Congress. Moreover, the Board received oral testimony from thirty-one industry representatives who participated in the public hearings held by the Board on January 29, and January 30, 1987. The issues and concerns raised by these oral and written comments have been thoroughly reviewed by the Board and are summarized in the final revised direct investment rule. Board Res. 87–215.

Description of the Interim Rule

Having carefully considered the issues raised in the oral and written comments responding to the September proposal, the Board, by Resolution No. 87–215, has determined to adopt the September proposal with certain modifications and clarifications, as set forth in the final rule. Although this final revised rule will become effective April 16, 1987, the current direct investment rule will expire on March 15, 1987. This interim rule is necessary in order to defer expiration of the current rule until the Board's final revised rule takes effect. To permit the current rule to lapse prior to the effective date of the final revised rule would result in a period of unregulated direct investment, which would generate uncertainty on the part of insured institutions as to the regulatory requirements and undermine the board's purpose of providing appropriate safeguards for direct investment through regulation, as explained in detail in the final revised rule. Accordingly, the Board hereby adopts an interim rule deferring the expiration of the current regulation until April 15, 1987.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in SUPPLEMENTARY INFORMATION.

2. *Issues raised by comments and agency assessment and response.*

These elements are incorporated above in SUPPLEMENTARY INFORMATION.

3. *Significant alteratives minimizing small-entity impact and agency response.* As discussed in the **SUPPLEMENTARY INFORMATION** above, the requirements of the interim rule are based upon the Board's determination that, in light of the Board's adoption of a final revised direct investment rule which will not become effective until April 16, 1987, it is necessary to preserve appropriate safeguards in the interim by deferring the expiration of the current rule from March 15, 1987 to April 15, 1987.

List of Subjects in 12 CFR Part 153

Bank deposit insurance, investments, reporting and recordkeeping requirements, saving and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows.

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 1981, 3 CFR, 1943–1948 Comp., p. 1071.

§ 563.9–8 [Amended]

2. Paragraph (h) of § 563.9–8 is amended by removing the date "March

15, 1987" and inserting in lieu thereof the date "April 15, 1987."

By the Federal Home Loan Bank Board.

Jeff Sconyers,
Secretary.

[FR Doc. 87-5414 Filed 3-12-87 8:45 am]
BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-CE-75-AD; Amendment 39-5579]

Airworthiness Directives; British Aerospace (BAe) Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to BAe Jetstream Model 3101 Series airplanes, which requires an elevator cable life limitation on the autopilot elevator trim cable, ET1, failure of which causes a nose up trim selection indicated on the flight deck console indicator without affecting the elevator tabs. Since this failure is not easily detectable by inspection, a cable life limit is being introduced by BAe to prevent the possible loss of elevator trim control.

DATES: EFFECTIVE DATE: April 17, 1987. Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

ADDRESSES: BAe Mandatory Alert Service Bulletin 22-A-JA861023 dated December 2, 1986, applicable to this AD may be obtained from Spares Manager, Product Support, British Aerospace plc, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland. This information may be examined at 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, Aircraft Staff, AEU-100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Harvey A. Chimerine, FAA, Project Support Staff Foreign, 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 an introduction of a life limit for the elevator trim servo cable, ET1, on certain BAe Jetstream Model 3101 airplanes, was published in the **Federal Register** on January 13, 1987 (52 FR 1338). The proposal resulted from one operator of a Jetstream Model 3101 airplane with an autopilot installation who experienced a failure of the elevator trim servo cable, ET1. The failure was no elevator trim tab movement with a nose up trim selection, although indicated on the flight deck center console indicator. Subsequent investigations by the manufacturer, British Aerospace, on the particular cable and on further samples of the cable from other operator aircraft, have revealed that the nature of the failure is fracture of the center strand of the cable, leading to loss of load-carrying capabilities of the cable, eventual separation and possible loss of elevator trim control. Since this failure mode is not easily detectable by inspection, it is therefore necessary to introduce a life limit for this cable. Consequently, British Aerospace issued BAe Mandatory Alert Service Bulletin 22-A-JA861023 dated December 2, 1986, which introduces a life limit of 2,000 hours time-in-service on the elevator trim servo cable to prevent the possible loss of elevator trim control.

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 Mandatory Alert 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 Mandatory Alert Service Bulletin 22-A-JA861023 dated December 2, 1986, and the mandatory classification of this Alert Service Bulletin by the CAA-UK, and concluded that the condition addressed by BAe Mandatory Alert Service Bulletin 22-A-JA861023 dated December 2, 1986, 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 two airplanes at an approximate one-time cost of $560 for each airplane, or a total one-time fleet cost of $1,120.

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 Jetstream Model 3101 (all serial numbers) airplanes equipped with Sperry SPZ-200B or SPZ-500 autopilot installation, certificated in any category.

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

To prevent the possible loss of elevator trim control, accomplish the following:

(a) For all affected airplanes on which the autopilot elevator trim servo cable has accumulated 1,900 hours or more time-in-service (TIS), within the next 100 hours TIS after the effective date of this AD and

thereafter at intervals not to exceed 2,000 hours TIS, replace the elevator trim servo cable, ET1, BAe Part Number (P/N) 137187E472, in accordance with BAe Mandatory Alert Service Bulletin 22-J-JA861023 dated December 2, 1986.

(b) For all affected airplanes on which the autopilot elevator trim servo cable has accumulated less than 1,900 hours TIS, at or before reaching 2,000 hours TIS and thereafter at intervals not exceeding 2,000 hours TIS, replace the autopilot elevator trim servo cable, ET1, BAe P/N 137187E472, in accordance with BAe Mandatory Alert Service Bulletin 22-J-JA861023 dated December 2, 1986.

(c) Airplanes may be flown in accordance with Federal Aviation Regulation (FAR) 21.197 to a location where this AD can be accomplished.

(d) 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 document(s) referred to herein upon request to Spares Manager, Product Support, British Aerospace plc, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on April 17, 1987.

Issued in Kansas City, Missouri, on March 3, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-5363 Filed 3-12-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3, 375 and 388

[Docket No. RM87-10-000]

Delegation of Authority To Decide Freedom of Information Act and Government in the Sunshine Act Appeals

Issued February 3, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations that implement the Freedom of Information Act[1] (FOIA) and the Government in the Sunshine Act.[2] These amendments delegate to the General Counsel or the General Counsel's designee the authority to decide appeals from determinations made under the Commission's FOIA and Sunshine Act regulations.

EFFECTIVE DATE: This rule is effective February 3, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph R. Hartsoe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

Order No. 463

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

The Federal Energy Regulatory Commission (Commission) is amending its regulations that implement the Freedom of Information Act [1] (FOIA) and the Government in the Sunshine Act.[2] These amendments delegate to the General Counsel or the General Counsel's designee the authority to decide appeals from determinations made under the Commission's FOIA and Sunshine Act regulations.

Under the current regulations, the Chairman of the Commission decides appeals from decisions of the Director of the Division of Public Information to release or withhold documents or parts thereof or to deny waivers or reductions of fees under the FOIA, the Sunshine Act and Parts 3, 375 and 388 of the Commission's regulations, 18 CFR Parts 3, 375 and 388 (1986). However, in view of the Chairman's extensive substantive and administrative obligations, the additional personal responsibility of reviewing FOIA and Sunshine Act appeals represents an inefficient and unreasonable use of Commission resources. The burden on the Chairman has been particularly serious as a result of a marked increase in FOIA appeals in recent months.

The Commission notes that generally FOIA and Sunshine Act appeals are time-consuming because they cannot be decided generically. Each appeal can involve numerous documents that must be analyzed individually on the basis of the standards provided in the FOIA or Sunshine Act. The General Counsel has sufficient legal staff to aid in the disposition of FOIA and Sunshine Act appeals within the short statutory and regulatory time limits. Therefore, the Commission believes the General Counsel or the General Counsel's designee should determine whether a document should be released or withheld, or fees should be waived or reduced before a requester seeks judicial review. Thus, the Commission is revising its FOIA regulations at Parts 3 and 388 and its Sunshine Act regulations at Part 375 to reflect this new delegation of authority.

Because this final rule is a matter of agency management, organization, procedure, and practice, prior notice and comment are unnecessary. 5 U.S.C. 553(a) and (b) (1982). This rule becomes effective February 3, 1987.

List of Subjects

18 CFR Part 3

Freedom of information, Organization and functions (Government agencies).

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 388

Freedom of information.

Accordingly, the Commission amends Parts 3, 375 and 388 of Title 18, Chapter I, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 3—[AMENDED]

1. The authority citations for 3.4 and 3.8 are removed and the authority citation for Part 3 is revised to read as follows:

Authority: Department of Energy Organizations Act, 42 U.S.C. 7101-7352 (1982); E.O. 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Natural Gas Act, 15 U.S.C. 717-717z (1982); Federal Power Act, 16 U.S.C. 791a-828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982); Interstate Commerce Act, 49 U.S.C. 1-27 (1976); Freedom of Information Act, 5 U.S.C. 552 (1982).

§ 3.8 [Amended]

2. In § 3.8, paragraph (k)(5)(iii) is amended by removing the word "Chairman" and inserting, in its place, the words "General Counsel or the General Counsel's designee".

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[1] 5 U.S.C. 522 (1982), as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99-507

[2] 5 U.S.C. 552b (1982).

[1] 5 U.S.C. 552 (1982), as amended by the Freedom of Information Reform Act of 1986, PUb. L. 99-507

[2] 5 U.S.C. 552b (1982).

PART 375—[AMENDED]

3. The authority citation of Part 375 continues to read as follows:

Authority: Electric Consumers Protection Act of 1986, Pub. L. 99-495; Department of Energy Organization Act, 42 U.S.C. 7101-7532, E.O. 12,009, 3 CFR 1977 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553; Federal Power Act, 16 U.S.C. 791-828c, as amended; Natural Gas Act, 15 U.S.C. 717-717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

4. In § 375.206, paragraph (f)(2) is revised to read as follows:

§ 375.206 Procedures to close meetings.

* * * * *

(f) *Public availability of transcripts, records, minutes.* * * *

(2) The determination of the Director of the Division of Public Information to withhold information pursuant to paragraph (f)(1) of this section may be appealed to the General Counsel or the General Counsel's designee, in accordance with § 388.107 of this chapter.

PART 388—[AMENDED]

5. The authority citation for Part 388 continues to read as follows:

Authority: 5 U.S.C. 552 and 533.

6. In § 388.107, paragraph (a)(1) is amended by removing the word "Chairman" and inserting, in its place, the words "General Counsel or General Counsel's designee".

7. In § 388.107, paragraph (b) is revised to read as follows:

§ 388.107 Timetables and procedures in event of withholding public records.

* * * * *

(b)(1) The General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 days after the receipt of such appeal. If, on appeal, the denial of the request for records is in whole or in part upheld, the General Counsel or the General Counsel's designee will notify the person making such request of the provisions for judicial review of that determination.

(2) Appeals filed pursuant to this section must be in writing, addressed to the General Counsel of the Commission, and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Commission not addressed and marked as indicated in this paragraph will be so addressed and marked by Commission personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.

* * * * *

[FR Doc. 87-2637 Filed 3-12-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 87-29]

Country of Origin Marking of Certain Unfinished Sweaters; Change of Position

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretative rule.

SUMMARY: This document gives notice that Customs is rescinding its previous rulings that New Zealand is the correct country of origin of sweaters made by sending New Zealand yarn to the People's Republic of China where it was knitted into sweater parts, which were partially sewn together and then returned to New Zealand where they were finished by completing the sewing and subjecting the garments to a process called "Super Wash".

After reviewing the comments received in response to the notice proposing this change, as well as the applicable law and judicial decisions, Customs now believes that the completion of the sewing and the "Super Wash" process do not result in a substantial transformation of the partially completed garment. Therefore, without a substantial transformation, the country of origin of the sweaters is the People's Republic of China, not New Zealand and the sweaters must be so marked.

EFFECTIVE DATE: This ruling shall be effective as to merchandise entered, or withdrawn from warehouse, for consumption on or after June 11, 1987.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that all articles of foreign origin, or their containers, imported into the U.S., shall be legibly and conspicuously marked to indicate the English name of the country of origin to an ultimate purchaser in the United States, unless specifically exempted. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the U.S. Further work or material added to an article in a second country must effect a substantial transformation in order to render that country the "country of origin" within the meaning of 134.1(b).

The importance of determining an article's correct country of origin lies not only in informing the ultimate purchaser, but also in the effect it has on any import quota that may pertain to that article. An import quota is a quantity control system, usually based on bilateral agreements with the countries concerned, which limits the amount of certain merchandise that may enter the U.S. from a foreign country. Quotas vary according to the country from which the merchandise is exported, and the specific type of merchandise involved.

An article which enters the U.S. marked with the wrong country of origin may be incorrectly charged to that country's import quota. The incorrectly marked articles may cause the quota for that country to fill faster than it should, resulting in fewer articles entering the U.S. from the exporting country than would otherwise be permitted. Conversely, more articles than the quota permits may enter the U.S. from the actual country of origin. Wool sweaters which are the product of the People's Republic of China are subject to quota restraints agreed upon in a bilateral agreement between that country and the U.S., but wool sweaters which are the product of New Zealand are not subject to quota restraints.

The finishing process used by New Zealand sweater producers on sweaters they export to the U.S. has aroused a controversy concerning the sweaters' correct country of origin. These producers purchase raw New Zealand wool and have it spun into yarn and dyed in New Zealand. They then send the yarn on consignment to the People's Republic of China where it is knitted into sweater parts, namely the fronts, backs and sleeves, which are joined together at the shoulders. The partially joined parts are returned to New Zealand to be finished into sweaters by sewing the two side seams, each of which extends through the armpit area and along the sleeve to the sleeve end; being subjected to a proprietary process called "Super Wash;" and when

specifications so require, adding buttons, zippers, shoulder pads, elbow pads, etc.

It is Customs understanding that the function of the "Super Wash" process is to chemically treat the wool material so that the finished garment may be cleaned in a household washing machine. "Super Wash" is also supposed to assist in the sizing of the garment, and give it a softer touch, lighter color and greater durability than it would otherwise have had had it not undergone this process.

In Customs Ruling (CR) #719580 dated June 15, 1982, and in CR #716351, dated July 20, 1981, the issue before Customs was whether the importer's process of sewing, "Super Washing" and otherwise finishing the sweaters in New Zealand effected a substantial transformation of the sweater from unfinished parts into a finished garment. Without a substantial transformation, the country where the parts were originally produced and partially joined is the country of origin, not New Zealand where the sweater was completed. Customs held that the completion of the sewing, "Super Washing" and other finishing in New Zealand, was, in fact, a substantial transformation.

The U.S. Department of Commerce has requested that Customs reconsider these rulings on the basis that the completion of the sewing and the "Super Wash" processing do not result in a substantial transformation. Commerce believes that New Zealand is not the correct country of origin and as a result, these incorrectly marked sweaters are entering the U.S. free of the textile import quotas imposed on sweaters of Chinese origin. In view of the concern of the Commerce Department, Customs, by a notice published in the **Federal Register** on January 30, 1984 (49 FR 3671), determined that a review of the above rulings was warranted and invited public comments on them before any change was made.

Discussion of Comments

Twenty comments were received in response to the notice, ten favored rescinding Customs previous rulings, ten opposed. Those in favor argue that the operations performed in New Zealand do not effect a substantial transformation of what is essentially a Chinese garment. They state that a minor assembly and a finishing operation in an intermediate country does not constitute a substantial transformation. In support of their position, these commenters cited several Customs rulings and court cases, among them *Uniroyal Inc.* v. *United States*, 542 F. Supp. 1026 (C.I.T. 1982), *aff'd* 702 F. 2nd 1022 (C.A.F.C. 1982), in which the U.S. Court of International Trade held that, for country of origin marking purposes, Indonesian footwear uppers were not substantially transformed in the U.S. by domestic processing which included attachments of outsoles to the imported uppers. The court noted that the footwear uppers had already attained their ultimate shape, form, and size in Indonesia, and that the domestic addition of the outsole was a relatively minor operation.

By analogy, it was stated that each of the four sweater sections (front, back, right sleeve, left sleeve) is precisely knit in China to constitute an integral part of a predetermined shaped and sized sweater and that this, combined with the joining of the parts in China, creates a substantially complete sweater. Furthermore, the partial assembly in China is accomplished by looping the parts together at the shoulder and neck on a "looping" machine operated by a highly skilled worker. In contrast, the final seaming in New Zealand is performed on a "cup seaming" machine which is not as sophisticated as a "looping" machine and is an operation which requires substantially less skill.

Also cited is the case of *United States* v. *100 Pieces, More or Less, Style 200 Artificial Knees*, 283 F. Supp. 409 (C.D. Calif. 1968), in which East Germany was held to be the country of origin of artificial knees originating in East Germany, but shipped to Switzerland for finishing and minor assembly operations. The court held that no substantial transformation occurred in Switzerland.

The Customs rulings on the issue that have been cited in favor of rescinding these rulings include: CR #710564 (assembly of ceiling fan components held not to effect substantial transformation where assembly process was perfunctory and more in the nature of a combining process); CR #712545 (alteration of an already finished sewing machine held not to be a substantial transformation); CR #710586 (cutting, sewing, and finishing of piece goods into terry cloth towels will effect a substantial transformation, but sewing of pre-cut towels will not); CR #056570 (assembly of sandals in Hong Kong from parts from Taiwan did not result in Hong Kong sandals where all parts necessary to complete the sandal were produced in Taiwan). It is pointed out that no new components are added in New Zealand and that all the parts necessary to complete the sweaters are produced in China.

On the question of the "Super Wash" chemical treatment performed in New Zealand, the Supreme Court decision of *Anheuser-Busch Brewing Ass'n* v. *United States*, 207 U.S. 556, 28 S.Ct. 204 (1908), has been cited for the proposition that, in order for a substantial transformation to occur, a new and distinctive article must emerge having a new name, character, or use. In that decision, the Court rejected the claim that corks, subjected to a special (secret) chemical processing, were substantially transformed. A cork put through the claimant's process, the Court observed, is still a cork. Throughout the years, courts have held that various chemical treatments did not work a fundamental change in an article: *Howard Hardy & Co. Inc.* v. *United States*, T.D. 48441 (Cust. Ct. 1936), where "imperial finishing," a shrinkage process, did not cause a substantial transformation; *Amity Fabrics Inc.* v. *United States*, 43 Cust. Ct. 64, C.D. 2104 (1959), which held that dyeing a dyed fabric did not create a new article and, therefore, was a mere alteration; and *John J. Coates* v. *United States*, 3 Cust. Ct. 193, C.D. 232 (1939), where dyeing dresses was held not be a substantial transformation.

To further strengthen their position, the commenters in favor of rescission cited section 308 of the Trade Agreements Act of 1979 (19 U.S.C. 2518) which contains the Rule of Origin which further defines the substantial transformation test, the crucial concept upon which this case turns. In this statute, it is stated that "An article is a product of a country or instrumentality only if . . . in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed." The commenters pointed out that this rule was designed to prevent the evasive practice of transshipment through an intermediate country where minor processing may occur. Finally, it was also stated that under Department of Commerce export classification procedures, garment parts are tantamount to the article itself.

The commenters opposing any change in Customs current position argue that a substantial transformation occurs in New Zealand and cite several recent decisions of the U.S. Court of International Trade as well as several recent Customs rulings to support their position.

One case cited several times by opposing commenters was *Cardinal Glove Co., Inc.* v. *United States*, 4 C.I.T. 41 (1982). In *Cardinal Glove*, the court

determined that cotton gloves assembled in Haiti from front and back panels manufactured in Hong Kong did not require an export license (visa) from Hong Kong because Haiti was the country of exportation. The court also made a finding, although possibly dictum, that the assembly in Haiti constituted a substantial transformation of the merchandise.

Also cited is the subsequent decision of the Court of International Trade in *Belcrest Linens* v. *United States*, Slip Op. 83–107 (1983), in which the court held a pillowcase to be a product of Hong Kong, the country where Chinese fabric was cut at predetermined markings, scalloped, sewed, and hemmed. As it did in *Cardinal Glove*, the court decided the case on a country of exportation principle. In addition, the court indicated that the Chinese fabric underwent a substantial transformation in Hong Kong.

It is urged that the processing of the sweater parts in New Zealand clearly exceeds in degree the processing considered in *Cardinal Glove* and *Belcrest Linens* and that the subject finished sweaters are new and different articles of commerce as opposed to sweater parts. As one commenter points out, knitted pieces cannot be called sweaters, used as sweaters, or sold as sweaters. The identity of sweaters is conferred in New Zealand, not China.

One of the commenters notes that the original wool used to knit the sweater parts in China is derived from New Zealand sheep, spun into yarn and dyed in New Zealand. In fact, as another commenter points out, New Zealand has more to do with production of the sweaters than China from a cost analysis perpective, *i.e.*, 65 percent of the value of the sweater is claimed to be added in New Zealand, including the cost of the New Zealand wool (50 percent if the cost of the wool is excluded). Only 35 percent of the value of the sweater is said to be attributable to knitting of the sweater shapes in China. According to *United States* v. *Murray*, 621 F.2d 1163 (1st Cir. 1980), enhancement of value is a key element in deciding whether a substantial transformation has occurred. The *Murray* case was also cited by commenters favoring the change of practice. Appropriately enough, commenters opposing the change also cited the Supreme Court case of *Anheuser-Busch* for the proposition that if processing of an article occurs in two or more countries, the article is considered for tariff purposes to be a product of the last country in which the processing created a new and different article.

The commenters opposed to the change also cite recent Customs decisions to the effect that assembly of a garment constitutes a substantial transformation. For instance, C.S.D. 80–10 (CR #059089) held that Hong Kong was the country of origin of five or six Taiwanese separate sweater parts shipped to Hong Kong for assembly into a completed garment. It is also contended that C.S.D. 83–88 (CR #071303) held that the country of origin of cardigan sweaters was Guam where there was an assembly of five imported parts (including front panels attached to the rear panel at the shoulders).

On the issue of the "Super Wash" chemical treatment performed in New Zealand, one commenter describes this shrink-proofing process as a chemical polymer treatment which changes the physical nature of the garment to make it machine-washable. The "Super Wash" process adds a polymer film to coat the wool fibers, thus achieving inter-fiber bonding or resin bridges which limit or eliminate movement of the fibers relative to each other. Apparently, the "Super Wash" label can only be used if the international standards set by the International Wool Secretariat for dimensional stability, felting resistance, and colorfastness are met.

Another commenter points out that "Super Washing" converts the sweater shapes into sized articles of clothing. During "Super Wash" the shapes shrink about 3 inches lengthwise, but are thereafter stabilized against further shrinkage. Thus, the parts produced in China are not sized into a finished garment until "Super Washed" in New Zealand.

Some commenters cite the case of *Dolliff & Company Inc.* v. *United States*, 81 Cust. Ct. 1, C.D. 4755 (1978), in which the court found that fabric exported to Canada was not merely altered, but transformed into a new and different article when the processing performed in Canada included heat-setting, chemical-scouring, dyeing, and treatment with finishing chemicals for anti-creasing and anti-static characteristics.

One commenter points out that if "Super Washing" *alone* does not effect a substantial transformation, then surely "Super Wash" combined with assembly operations in New Zealand results in a substantial transformation.

The claim is made that not only is New Zealand the "country of origin" of the subject sweaters for marking purposes, but also the "country of exportation" for purposes of determining whether the sweaters are subject to the textile restraints imposed upon Chinese sweaters.

One commenter opposing the change of position states that country of origin determinations should be made independently of quota considerations and that the Commerce Department has no authority to interfere with Customs administration of Customs laws. Another commenter, in the same vein, states that country of origin determinations must be made under Customs laws as provided in the bilateral trade agreements. Still another commenter criticizes the Commerce Department for attempting to impose quota restraints upon New Zealand.

Finally, some commenters opposed to a change of position point out that Customs is required to reverse a practice only if such practice is "clearly wrong." Reference has been made to §§ 177.9(d)(2) and 177.10(b), Customs Regulations (19 CFR 177.9(d)(2), 177.10(b)), regarding the publication of ruling revocations.

Decision

First, it should be made clear that decisions of Customs, particularly rulings, are made after consideration of all relevant matters. Country of origin determinations in regard to marking and other areas are made on the facts of each case and what is deemed to be the applicable law. The quota status of merchandise is not a pertinent consideration. The views of the Department of Commerce concerning the correctness of a Customs ruling will be considered just as the views of any importer or manufacturer also would be considered.

Customs believes that the mere stitching together of two seams of an otherwise assembled sweater will not, by itself, cause a change in the country of origin of that garment. However, the problem is whether there has been a substantial transformation of the garment when the seam stitching is done in conjunction with other processing such as "Super Washing".

Whether a substantial transformation has occurred depends upon a comparison of the article *before* the processing which is claimed to effect such transformation and the article *after* the processing. Examination of the processing operations, and their relative costs and complexities, will also be considered. It is a well-settled principle of Customs law that, in order for a substantial transformation to be found, a new article having a new name, character, or use, must emerge from processing in a second country. *United*

States v. *Gibson-Thomsen Co. Inc.*, 27 C.C.P.A. 267, C.A.D. 98 (1940).

The *Dolliff* case, *supra*, is not applicable to the instant circumstances. The Court of Customs and Patent Appeals (*Dolliff & Co.* v. *United States*, 66 CCPA 77, C.A.D. 225 (1979)), decided the case on the narrow issue of whether the finishing, including heat setting and dyeing, of greige fabric, constituted an "alteration" for purposes of item 806.20, TSUS, not whether there was a substantial transformation for country of origin marking purposes.

Even if the CCPA decision in *Dolliff* could be extended beyond item 806.20, TSUS, that case does not go as far as *Joshua Hoyle & Sons* v. *United States*, 25 CCPA 128, T.D. 49244 (1937), which held that griege cloth which was mercerized and bleached became a new and different article having a new name, character, or use, because the processing transformed fabric which was commercially unsuitable for making shirts into shirting material.

United States v. *Murray*, *supra*, contains pertinent observations concerning country of origin criteria. There, the court defined the term "substantial transformation" as meaning a fundamental change in the form, nature, appearance, or character of an article which adds to the value of the article an amount or percentage which is significant in comparison with the value which the article had when exported from the country in which it was first manufactured, produced, or grown.

In regard to that definition, Customs does not believe that the sewing of two seams of a sweater and subjecting that garment to a "Super Washing" process *fundamentally* changes the form, nature, appearance, or character of that garment. If, instead of being sent to New Zealand for finishing, the sweater was to be finished in the U.S., upon its importation it would be considered to be a substantially complete sweater, and classified as such. See General Headnote 10(h), TSUS. The processing of the garment in New Zealand has not changed the essence of the article. *Uniroyal Inc.* v. *United States*, *supra*. In this connection, *United States* v. *American Textile Engineering, Inc.*, 26 CCPA 48, T.D. 49597 (1938), involved a texturing-type processing of yarn, and, while the court recognized that the processing advanced the yarn in condition for use and to some extent changed its characteristics, the court held the merchandise did not have a new name, character, or use. The resultant product was still yarn.

Pursuant to the decisions in *Murray* and *Uniroyal*, the relative values and costs and the complexity of processing may be compared to aid in the determination of whether there has been a substantial transformation of the merchandise in a second country. Neither of those cases dealt with a situation such as presented here, where material from New Zealand is clearly transformed by a substantial manufacturing process into a product of China before being returned to New Zealand for further processing. What left China was plainly a product of that country. Therefore, it is logical to compare what left China with what was entered into the U.S. to determine if there has been sufficient further processing in New Zealand for the merchandise to cease being a Chinese product. Following the wording of *Murray*, it would appear that the initial costs and processing incurred in New Zealand *may* be attributable to China. However, in view of the fact that there was no fundamental change in the merchandise in New Zealand prior to its export to the U.S., it is not necessary to resolve the allocation, if any, of the initial New Zealand costs and processing.

The decision in *Cardinal Glove*, *supra*, involved a completely different factual situation and is not considered controlling. That case involved the assembly of glove halves and was decided essentially on a country of exportation principle. Although making a finding of substantial transformation, at no time did the court discuss or review the legal principles involved with that principle.

It should also be noted that, contrary to an assertion that *Cardinal Glove* expressly approved of the result in C.S.D. 80–10, the court only cited the holding. The court expressed its full agreement with that portion of C.S.D. 80–10 which held that the manner of shipment from one country to a second country is not relevant to the determination of which country is the country of exportation.

After the receipt of comments requested on this matter, by T.D. 84–171, published in the **Federal Register** on August 3, 1984 (49 FR 31248), Customs issued interim regulations, which set out in § 12.130, Customs Regulations (19 CFR 12.130), criteria for country of origin determinations of textiles and textile products for quota, visa, and export license purposes. Numerous comments were received in response to the interim regulations. After consideration of the comments and further review of the matter, by T.D. 85–38, published in the **Federal Register** on March 5, 1985 (50 FR 8710), Customs adopted the interim regulations with certain modifications. Section 12.130, provides that where an article is the growth, product, or manufacture of two or more countries, it is a product of that country where it was substantially transformed by means of a substantial manufacturing or processing operation into a new and different article of commerce. Specific criteria are set forth to be considered in determining (1) whether there has been a substantial manufacturing or processing operation, and (2) whether, prior to importation into the U.S., an article or material usually will or will not be considered a product of a particular foreign territory or country, or insular possession of the U.S. Specifically stated not to constitute a substantial transformation are such processes as the mere joining together of otherwise completed component parts and "Super Washing". However, by performing both of these operations in one country, a substantial transformation is not automatically precluded.

Although § 12.130 was specifically promulgated for quota, visa, and export license purposes, the principles of origin contained therein were derived from recent judicial decisions (*e.g.*, *Uniroyal* v. *United States*) and represent the law, as Customs understands it, to be applied in all country of origin decisions.

While, on their face the new regulations may appear to be in conflict with *Cardinal Glove*, *supra*, and such administrative decisions as C.S.D. 80–10, Customs does not believe that this is the case. If the court in *Cardinal Glove*, or if Customs in C.S.D. 80–10 and other rulings, had the information available which is now required by §12.130, concerning costs and complexity of processing, etc., and had considered that information, as the court did in *Uniroyal*, the results could have been different.

Customs believes that when a comparison is made between the unfinished sweaters which went into New Zealand and the completed sweaters which were exported from New Zealand, the stitching and "Super Washing" in New Zealand actually amounted to a minor processing.

Accordingly, whether following the recent decisions in *Murray* or *Uniroyal* or the origin principles embodied in § 12.130, Customs believes that the sewing of two seams and the treating of a sweater so that it is washable does not fundamentally change a substantially complete sweater into a new and different article having a new name, character, or use. Therefore, this document revokes both CR #716351 and CR #719580 and any other existing Treasury or Customs decisions or administrative rulings, to the extent that

they are inconsistent with the views contained herein.

In a related matter, by a document published in the **Federal Register** on August 2, 1985 (50 FR 31392), Customs proposed to change the established and uniform practices that are in conflict with the new criteria set forth in § 12.130. Because these changes of practice, if adopted, may result in higher rates of duty being assessed, the notice invited public comments on them before any change is made. After analysis of comments received in response to the notice proposing the changes of practice, another document will be prepared for publication in the **Federal Register**.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 134

Customs duties and inspection, imports, labeling, packaging and containers.

William von Raab,

Commissioner of Customs.

Approved.

Michael H. Lane,

Acting Assistant Secretary of the Treasury.

June 24, 1986.

Editorial Note.—This document was received at the Office of the Federal Register March 10, 1987.

[FR Doc. 5418 Filed 3–12–87; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Drugs and Biologics Officials

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FRA) is amending the regulations for delegations of authority to terminate exemptions for new drugs for investigational uses when sponsors fail to submit an annual progress report under 21 CFR 312.1(d)(10). This amendment will delegate authority to those division directors and deputy division directors in the Center for Drugs and Biologics (CDB) who are already authorized under 21 CFR 5.71(a)(2) to take certain pretermination actions.

EFFECTIVE DATE: March 13, 1987.

FOR FURTHER INFORMATION CONTACT: Marjorie J. Shandruk, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is revising § 5.71 *Termination of exemptions for new drugs for investigational use in human beings and in animals* (21 CFR 5.71) by redesignating existing paragraph (a)(1)(ii) as paragraph (a)(1)(iii) and adding new paragraphs (a)(1) (ii) and (iv). In order to facilitate efficiency in the routine termination of investigational new drugs whose sponsors have failed to submit annual progress reports, this authority is delegated to the following Center for Drugs and Biologics officials: Directors and Deputy Directors in the Divisions of Neuropharmacological Drug Products, Cardio-Renal Drug Products, Surgical-Dental Drug Products, and Oncology and Radiopharmaceutical Drug Products in the Office of Drug Research and Review; Directors and Deputy Directors in the Divisions of Anti-Infective Drug Products, and Metabolism and Endocrine Drug Products in the Office of Biologics Research and Review.

Further redelegation of the authority is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 et seq.; 21 U.S.C. 41 et seq., 61–63, 141 et seq., 301–392, 467f(b), 679(b), 801 et seq., 823(f), 1031 et seq.; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u et seq., 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921.

2. Section 5.71 is amended by redesignating existing paragraph (a)(1)(ii) as paragraph (a)(1)(iii) and by adding new paragraphs (a)(1) (ii) and (iv), to read as follows:

§ 5.71 Termination of exemptions for new drugs for investigational use in human beings and in animals.

(a) * * *

(1) * * *

(ii) The Directors and Deputy Directors of the Divisions of: Neuropharmacological Drug Products, Cardio-Renal Drug Products, Surgical-Dental Drug Products, and Oncology and Radiopharmaceutical Drug Products, Office of Drug Research and Review, CDB.

* * * * *

(iv) The Directors and Deputy Directors of the Divisions of: Anti-Infective Drug Products, and Metabolism and Endocrine Drug Products, Office of Biologics Research and Review, CDB.

* * * * *

Dated: March 6, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–5383 Filed 3–12–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 74

[Docket No. 85C–0377]

[Phthalocyaninato(2-)] Copper; Listing as a Color Additive for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confiming the effective date of November 28, 1986, for the final rule that amended the color additive regulations to delete the current limitation on the level of [phthalocyaninato(2-)] copper to color contract lenses.

EFFECTIVE DATE: Effective date confirmed: November 28, 1986.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, 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 the **Federal Register** of October 28, 1986 (51 FR 39370), FDA amended 21 CFR Part 74 of the color additive regulations in 21 CFR 74.3045 by revising paragraph (c)(2) to eliminate the 0.01 percent limitation

in the use of [phthalocyaninato(2-)] copper in contact lenses.

FDA gave interested persons until November 28, 1986, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA had concluded that the final rule published in the **Federal Register** of October 28, 1986, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the October 28, 1986, final rule. Accordingly, the amendments promulgated thereby became effective November 28, 1986.

Dated: March 6, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–5446 Filed 3–12–87; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 331, 332, and 357

[Docket No. 82N–0154]

Labeling of Drug Products for Over-The-Counter Human Use; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that changed its "exclusivity" policy for labeling of over-the-counter (OTC) drug products. This document indicates that specific paragraphs in 21 CFR 331.130(b), 332.30(a), and 357.250(b) where other statements describing indications for use are located. By indicating these specific paragraphs, FDA will eliminate the ambiguity associated with the use of the term "above".

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug and Biologics (HFN–210), Food and Drugs Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In FR Doc. 86–9720, appearing on page 16258 in the issue of Thursday, May 1, 1986, the following corrections are made:

§ 331.30 [Corrected]

1. On page 16266, in the third column under § 331.30 *Labeling of antacid products*, paragraph (b), 14th line, "above" is corrected to read "in this paragraph (b)".

§ 332.30 [Corrected]

2. On page 16266, in the third column under § 332.30 *Labeling of antiflatulent products*, paragraph (a), 9th line, "above" is corrected to read "in this paragraph (a)".

§ 357.250 [Corrected]

3. On page 16267, in the second column under § 357.250 *Labeling of cholecystokinetic drug products*, paragraph (b), 9th line "above" is corrected to read "in this paragaph (b)".

Dated: March 5, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–5382 Filed 3–12–87; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 341

[Docket No. 75N–052B]

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for OTC Bronchodilator Drug Products; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that established conditions under which over-the-counter (OTC) bronchodilator drug products (drug products used in the symptomatic treatment of wheezing and shortness of breath of asthma) are generally recognized as safe and effective and not misbranded. This document indicates the specific paragraph in 21 CFR 341.76(b) where other statements describing indications for use are located. By indicating this specific paragraph, FDA will eliminate the ambiguity associated with the use of the term "below."

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In FR Doc. 86–22151, appearing on page 35326 in the issue of Thursday, October 2, 1986, the following correction is made on page 35339: In the third column under § 341.76 *Labeling of bronchodilator drug products*, paragraph (b), 8th line, "below" is corrected to read "in this paragraph (b)".

Dated: March 5, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–5380 Filed 3–12–87; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 344

[Docket No. 77N–0334]

Topical Otic Drug Products for Over-the-Counter Human Use; Final Monograph; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that established conditions under which over-the-counter (OTC) topical otic drug products (drug products for the ear) are generally recognized as safe and effective and not misbranded. This document indicates the specific paragraph in 21 CFR 344.50(b) where other statements describing indications for use are located. By indicating this specific paragraph, FDA will eliminate the ambiguity associated with the use of the term "above."

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In FR Doc. 86–17854, appearing on page 28656 in the issue of Friday, August 8, 1986, the following correction is made on page 28661: In the second column under § 344.50 *Labeling of topical otic drug products*, paragraph (b), 10th line, "above" is corrected to read "in this paragraph (b)".

Dated: March 5, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–5381 Filed 3–12–87; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 357

[Docket No. 79N–0378]

Anthelmintic Drug Products for Over-The-Counter Human Use; Final Monograph; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that established conditions under which over-the-counter (OTC) anthelmintic drug products (products that destroy pinworms) are generally recognized as safe and effective and not misbranded. This document indicates the specific paragraph in 21 CFR 357.150(b) where other statements describing indications for use are located. By indicating this specific paragraph, FDA will eliminate the ambiguity associated with the use of the term "above."

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In FR Doc. 86–17180, appearing on page 27756 in the issue of Friday, August 1, 1986, the following correction is made on page 27759: In the second column under § 357.150 *Labeling of anthelmintic drug products,* paragraph (b), 8th line, "above" is corrected to read "in this paragraph (b)".

Dated: March 5, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–5379 Filed 3–12–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 510, 520, 522, 524, and 529

Animal Drugs, Feeds, and Related Products; Change of Sponsor; Labeler Code; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect (1) a change of sponsor of several new animal drug applications (NADA's) from Burns-Biotec Laboratories, Inc., to Schering Corp. and (2) a change of sponsor of an NADA to Summit Hill Laboratories from Burns-Biotec Laboratories, Inc. The regulations are also amended to designate the correct drug labeler code assigned to Shering Corp. for its veterinary drug products.

EFFECTIVE DATE: March 13, 1987.

FOR FURTHER INFORMATION CONTACT: John W. Borders, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Burns-Biotec Laboratories, Inc., 8530–8536 K St., P.O. Box 3113, Omaha, NE 68103, has informed FDA of a change of sponsor for NADA 48–854, glyceryl guaiacolate injection for horses, to Summit Hill Laboratories, P.O. Box 535, Navesink, NJ 07752. The NADA provides for the intravenous use of glyceryl quaiacolate as a muscle relaxant in horses. Summit Hill Laboratories (drug labeler code 037990) has confirmed the change of sponsor. Summit Hill has also filed a supplemental NADA containing updated manufacturing facilities, methods, and controls information

Schering Corp., Galloping Hill, Rd., Kenilworth, NJ 07933, filed several supplemental NADA's providing for a change of sponsor from its subsidiary, Burns-Biotec Laboratories, Inc. The NADA's affected are:

NADA	Product	Ingredient
9–167	P.L.H. (cattle, horses, swine, sheep, dogs).	Pituitary luteninizing hormone for injection.
9–505	F.S.H.-P. (cattle, horses, swine, sheep, dogs).	Follicle stimulating hormone-pituitary for injection.
10–793	Nonemic (swine)	Iron dextran injection.
12–635	BO-SE and L-SE (calves, lambs, ewes, sows).	Sodium selenite, vitamin E injection.
30–313	Selotoc Caps and Minicaps (dogs).	Sodium selenite, vitamin E.
30–314	MU-SE (cattle, calves, swine)	Sodium selenite, vitamin E injection.
30–315	E-SE (equine)	Sodium selenite, vitamin E injection.
30–316	Selectoc Injection (horses, dogs).	Sodium selenite vitamin E injection.
31–971	Cuprate (cattle)	Cupric glycinate injection.
40–322	Kymar (intment Improved (horses, dogs, cats).	Neomycin pamitate, hydrocortisone acetate.
46–288	Histavet-P (horses)	Pyrilamine maleate injection.
119–807	Beuthanasia-D Special (dogs)	Euthanasia solution.

The change of sponsor to Schering Corp. does not involve any changes in current manufacturing facilities, equipment, procedures, or production personnel. FDA is amending the regulations to reflect the change of sponsor.

FDA is amending 21 CFR 510.600(c) (1) and (2) and the sponsor paragraphs of 21 CFR 520.540a, 520.540b, 520.970a, 520.970b, 520.1044a, 520.1044b, 520.1044c, 520.1100, 520.1341, 520.2100, 520.2473a, 522.161, 522.163, 522.518, 522.540, 522.900, 522.970, 522.1044, 522.1060b, 522.1182, 522.1820, 522.1822, 522.1890, 522.2063, 522.2100, 524.1044a, 524.1044b, 524.1044c, 524.1044d, 524.1044e, 524.1044f, 524.2350, 529.1044a, and 529.1044b providing for use of the veterinary drug products currently sponsored by Schering; this action is required to change the drug labeler code currently used in those regulations from 000085 to 000061. Schering has been assigned drug labeler code 000085 for human drug products and 000061 for veterinary drug products. Therefore, the regulations are amended to insert the correct labeler code.

FDA is also amending 21 CFR 510.600(c)(1) and (2) to remove Burns-Biotec Laboratories, Inc. because it is no longer the sponsor of any approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, and 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510, 520, 524, and 529 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for Schering Corp. by revising the drug labeler code to read "000061" and by removing the entry for Burns-Biotec Laboratories, Inc., and in paragraph (c)(2) by revising the entry for "000085" to read "000061" and numerically inserting it in proper sequence, and by removing the entry for "000845".

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

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

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

§ 520.540a [Amended]

4. Section 520.540a *Dexamethasone powder* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 520.540b [Amended]

5. Section 520.540b *Dexamethasone tablets and boluses* is amended in paragraphs (a)(2) and (b)(2) by removing "000085" and inserting in its place "000061."

§ 520.970a [Amended]

6. Section 520.970a *Flunixin meglumine granules* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 520.970b [Amended]

7. Section 520.970b *Flunixin meglumine paste* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 520.1044a [Amended]

8. Section 520.1044a *Gentamicin sulfate oral solution* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 520.1044b [Amended]

9. Section 520.1044b *Gentamicin sulfate pig pump oral solution* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 520.1044c [Amended]

10. Section 520.1044c *Gentamicin sulfate soluble powder* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 520.1100 [Amended]

11. Section 520.1100 *Griseofulvin* is amended in paragraph (c)(1) by removing "000085" and inserting in its place "000061."

§ 520.1341 [Amended]

12. Section 520.1341 *Megestrol acetate tablets* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 520.2100 [Amended]

13. Section 520.2100 *Selenium, vitamin E capsules* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 520.2473a [Amended]

14. Section 520.2473a *Tioxidazole granules* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

15. The authority citation for 21 CFR Part 522 continues to read as follows:

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

§ 522.161 [Amended]

16. Section 522.161 *Betamethasone acetate and betamethasone disodium phosphate aqueous suspension* is amended in paragraph (c) by removing "000085" and inserting in its place "000061."

§ 522.163 [Amended]

17. Section 522.163 *Betamethasone dipropionate and betamethasone sodium phosphate aqueous suspension* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 522.518 [Amended]

18. Section 522.518 *Cupric glycinate injection* is amended in paragraph (b) by removing "000845" and inserting in its place "000061."

§ 522.540 [Amended]

19. Section 522.540 *Dexamethasone injection* is amended in paragraph (a)(2) by removing "000085" and inserting in its place "000061."

§ 522.900 [Amended]

20. Section 522.900 *Euthanasia solution* is amended in paragraph (b)(2) by removing "000845" and inserting in its place "000061."

§ 522.970 [Amended]

21. Section 522.970 *Flunixin meglumine solution* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 522.1044 [Amended]

22. Section 522.1044 *Gentamicin sulfate injection* is amended in paragraph (b)(1) by removing "000085" and inserting in its place "000061."

§ 522.1060b [Amended]

23. Section 522.1060b *Glyceryl guaiacolate injection* is amended in paragraph (b) by removing "000845" and inserting in its place "037990."

§ 522.1182 [Amended]

24. Section 522.1182 *Iron dextran complex injection* is amended in paragraph (a)(4)(i) by removing "000845" and inserting in its place "000061."

§ 522.1820 [Amended]

25. Section 522.1820 *Pituitary luteinizing hormone for injection* is amended in paragraph (b) by removing "000845" and inserting in its place "000061."

§ 522.1822 [Amended]

26. Section 522.1822 *Follicle stimulating hormone-pituitary for injection* is amended in paragraph (b) by removing "000845" and inserting in its place "000061."

§ 522.1890 [Amended]

27. Section 522.1890 *Sterile prednisone suspension* is amended in paragraph (b)(2) by removing "000085" and inserting in its place "000061."

§ 522.2063 [Amended]

28. Section 522.2063 *Pyrilamine maleate injection* is amended in paragraph (b) by removing "000845" and inserting in its place "000061."

§ 522.2100 [Amended]

29. Section 522.2100 *Selenium, vitamin E injection* is amended in paragraphs (a)(2) and (b)(2) by removing "000845" and inserting in its place "000061."

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

30. The authority citation for 21 CFR Part 524 continues to read as follows:

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

§ 524.1044a [Amended]

31. Section 524.1044a *Gentamicin ophthalmic solution* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 524.1044b [Amended]

32. Section 524.1044b *Gentamicin sulfate, betamethasone valerate otic solution* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 524.1044c [Amended]

33. Section 524.1044c *Gentamicin ophthalmic ointment* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 524.1044d [Amended]

34. Section 524.1044d *Gentamicin sulfate, betamethasone valerate ointment* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§ 524.1044e [Amended]

35. Section 524.1044e *Gentamicin sulfate spray* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§524.1044f [Amended]

36. Section 524.1044f *Gentamicin sulfate, betamethasone valerate topical spray* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§524.2350 [Amended]

37. Section 524.2350 *Tolnaftate cream* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

38. The authority citation for 21 CFR Part 529 continues to read as follows:

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

§529.1044a [Amended]

39. Section 529.1044a *Gentamicin sulfate intrauterine solution* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

§529.1044b [Amended]

40. Section 529.1044b *Gentamicin sulfate solution* is amended in paragraph (b) by removing "000085" and inserting in its place "000061."

Dated: March 5, 1987.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-5378 Filed 3-12-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of two new animal drug applications (NADA's) held by De Kalb Feeds, Inc. One NADA provides for the use of a 0.8-gram-per-pound tylosin Type A article to make Type C swine feed and the other provides for use of a 10-gram-per-pound tylosin Type A article to make Type C swine, beef cattle, and chicken feeds. FDA is also amending the regulations to remove the firm from the list of sponsors of approved NADA's. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: March 23, 1987.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3184.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of De Kalb Feed's, Inc., NADA's 133-382 and 133-383. NADA 133-382 provides for use of a 10-gram-per-pound tylosin Type A article to make Type C swine, beef cattle, and chicken feeds. NADA 133-383 provides for use of a 0.8-gram-per-pound tylosin (as tylosin phosphate) Type A article for making a Type C swine feed. This document removes and reserves 21 CFR 558.625(b)(81) that reflected approval of the NADA's. Additionally, because the firm is no longer sponsor of any approved NADA's, 21 CFR 510.600(c) (1) and (2) is amended to remove the firm from the list of sponsors of approved NADA's.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10, 5.83.

§510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "De Kalb Feeds, Inc.," and in paragraph (c)(2) by removing the entry for "024857."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10, 5.83.

§558.625 [Amended]

4. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(81).

Dated: March 9, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-5447 Filed 3-12-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Oxytetracycline Hydrochloride Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental NADA filed by Pfizer, Inc., providing a specification revision to correctly express the amount of drug activity as 100 milligrams of oxytetracycline hydrochloride per millimeter of drug product. The drug product is used to treat bacterial infections in beef cattle, nonlactating dairy cattle, and swine.

EFFECTIVE DATE: March 13, 1987.

FOR FURTHER INFORMATION CONTACT: John R. Markus, Center for Veterinary Medicine (HFV-142), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3442.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, is the sponsor of NADA 94-114 which provides for use of Liquamycin 100/Terramycin 100 Injections (100 milligrams of oxytetracycline hydrochloride per milliliter) in the treatment of beef cattle, nonlactating dairy cattle, and swine. Provisions for use of the drug are in 21 CFR 522.1662a(e). The specifications paragraph of that regulation currently expresses drug activity in terms of an equivalent amount of oxytetracycline base. Pfizer has filed a supplemental NADA providing for changing the activity statement from the oxytetracycline base equivalency to the amount of oxytetracycline hydrochloride. The supplement is approved and 21 CFR 522.1662a(e)(1) is amended to reflect the approval.

Approval of this supplement is an administrative action that did not require generation of new effectiveness or safety data. Therefore, a freedom of information summary (pursuant to 21 CFR 514.11(e)(2)(ii)) is not required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

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

§ 522.1662a [Amended]

2. Section 522.1662a *Oxytetracycline hydrochloride injection* is amended in paragraph (e)(1) by removing "(as oxytetracycline hydrochloride)" and replacing it with "hydrochloride."

Dated: March 5, 1987.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-5377 Filed 3-12-87; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

[Docket No. 77N-0076]

New Animal Drugs for Use in Animal Feeds; Medicated Feed Applications; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that it published in the **Federal Register** of January 26, 1987 (52 FR 2681) that made minor technical revisions to its regulations concerning conditions of approval for manufacture of animal feeds containing new animal drugs. This document reinstates the entry for narasin, which was inadvertently omitted (see **Federal Register** of August 14, 1986, 51 FR 29097, and amended in the **Federal Register** of February 11, 1987, 52 FR 4284). This document also corrects the assay limit for niclosamide.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFA-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4438.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-1409 appearing on page 2681 in the issue of Monday, January 26, 1987, page 2682, § 558.4(d) is corrected by revising the entry for "Niclosamide" and by alphabetically adding an entry for "Narasin" to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent [1] type A	Type B maximum (200x)	Assay limits percent [1] type B/C [2]
* * *	*		*
Narasin	90-110	7.2 g/lb (1.6%)	85-115/75-125.
* * *	*		*
Niclosamide	85-120	225 g/lb (49.5%)	80-120.
* * *	*		*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make a Type C medicated feed.

Dated: March 6, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-5571 Filed 3-12-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 87-5]

Truck Length and Width Exclusive Devices; Notice of Interpretation and Opportunity to Comment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of interpretation of truck length and width exclusive devices; opportunity for comments.

SUMMARY: This notice announces an interpretation of length and width exclusive devices as defined in 23 CFR 658.5 (e) and (g). The regulations implementing the provisions of the Surface Transportation Assistance Act (STAA) of 1982 exclude from the length and width limitation all appurtenances at the front, side, or rear of a commercial motor vehicle whose function is related to the safe and efficient operation of the motor vehicle, and which are not designed or used for carrying cargo.

DATES: This statement of interpretation is effective March 13, 1987. Comments upon the technical accuracy of the contents of this document may be submitted by June 11, 1987.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 87-5, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Edwin E. Rugenstein, Office of Motor Carrier Standards, (202) 366-4026 or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: A final rule implementing the truck size and weight provisions of the STAA of 1982, Pub. L. 97-424, 96 Stat. 2097 was published on June 5, 1984, at 49 FR 23302. This document represented the culmination of major efforts by the FHWA to implement the truck size and weight provisions of the STAA of 1982. The provisions established in the June 5 final rule are contained in 23 CFR 658.

The STAA of 1982 prevents States from establishing a maximum width of more or less than 102 inches for

commercial motor vehicles operating on the National Network. The STAA also provides that, on the National Network, no State may impose a length limitation of less than 48 feet for a semitrailer operating in a truck-tractor-semitrailer combination and 28 feet (28½ feet when legally operated as of December 1, 1982) for the length of a trailer or semitrailer operating in a truck-tractor semitrailer-trailer combination.

Sections 411(h) and 416(b) of the STAA of 1982 list length and width exclusive devices and empower the Secretary to interpret as necessary any additional length and width exclusive devices for safe and efficient operation of commercial motor vehicles. Some specific length and width exclusive devices are generically defined in 23 CFR 658.5(e) and 23 CFR 658.5(g), respectively. Length exclusive devices are all appurtenances at the front or rear of a commercial motor vehicle semitrailer or trailer, whose function is related to the safe and efficient operation of the semitrailer or trailer. Width exclusive devices are federally approved safety devices as listed in 23 CFR 658.5(g) or safety devices determined by the States in accordance with 23 CFR 658.15(c) as necessary for the safe and efficient operation of motor vehicles. In keeping with the STAA of 1982, no device excluded from length or width limitation shall be designed or used for carrying cargo.

Exclusions specifically listed in the STAA of 1982 are safety and energy conservation devices such as rear view mirrors, turn signal lamps, marker lamps, steps and handholds for entry and egress, flexible fender extensions, mud flaps and splash and spray suppressant devices, load-induced tire bulge, and refrigeration units or air compressors.

Previous Interpretations

A notice of interpretation of the maximum width of trucks on the Interstate System was published on January 2, 1981 (46 FR 32). At that time, ninety-six inches was the maximum width of vehicles allowed on the Interstate highway system. However, the FHWA's interpretation of the statute as it relates to the inclusion of safety devices remains valid.

A notice of interpretation for additional length exclusive devices was published on January 13, 1986 (51 FR 1367). Two items were accorded length exclusive status: bolsters, within a certain dimension, and certain hydraulic lift gates, also within certain dimensions. A bolster is defined as a structure fastened to the front of a trailer chassis and not having, by design or use, the capability to carry cargo. The main functional use of this equipment is to stabilize cargo during speed-change maneuvers. The hydraulic lift gate (extending 12 inches beyond the rear of a trailer when in the up position) would facilitate loading operations. The lift gate would be required to be in the up position and no cargo would be carried on it while traveling on the highway. The lift gate would primarily be used for more efficient and possibly safer loading operations.

At the same time, the FHWA rejected one item from consideration as a length exclusive device. This was a steel structure permanently mounted on the front of a trailer containing the kingpin connection for the fifth wheel and extending 7 feet forward from the cargo-carrying portion of the trailer. Rejection was based on the fact that the steel structure appears to be an integral part of the cargo-carrying portion of the trailer and the overall trailer length would be such that it may have significantly different operating characteristics.

Length and Width Exclusions

There has been confusion among trailer manufacturers, motor carriers, and enforcement personnel as to the type of devices that should be excluded from Federal length and width limits. Specifically, the Truck Trailer Manufacturers Association (TTMA) and the American Trucking Associations, Inc. (ATA) have written the FHWA requesting the FHWA clarify trailer width and length limitations. Therefore, we offer the following interpretations (for the purposes of this notice the term "trailer" means semitrailer or trailer):

Interpretations of Length

1. The length of a semitrailer equipped with an upper coupler (mates with a truck tractor fifth wheel) and a full trailer (with either a permanently mounted dolly or equipped with a converter dolly) is to be measured from the front vertical plane of the foremost transverse load carrying structure to the rear vertical plane of the rearmost transverse load carrying structure. The towbar of a full trailer is excluded from the length measurement since, technically, it carries no load, but rather it is the means by which the trailer unit is drawn.

2. Tiedown devices used by auto transporters to stabilize the load being carried are sometimes a combination device, both a tiedown and a load carrying device. When such a device is used only as a tiedown, it is excluded from length measurement.

3. The length of a semitrailer which employs a fixed towbar is to be measured from the center of the towbar eye to the rear vertical plane of the rearmost transverse load carrying structure.

4. Any non-load carrying item which falls within the swing radius of the trailer (radius measured from the center line of the kingpin to the front corner of the trailer) is excluded from the measurement of trailer length.

5. Any add-on equipment such as lift gates, winches, etc., are excluded from the measurement of trailer length. Lift gates shall not extend beyond 24 inches from the rear of a trailer when in the up position.

6. Aerodynamic devices (air deflectors) are excluded from the measurement of trailer length. They shall not obscure tail lamps, turn signals, marker lamps, identification lamps, license plates or any other required safety device such as hazardous materials placards. These devices shall not extend beyond 5 feet from the rear of a trailer when in the operational position.

7. The "B-train" assembly is a rigid frame extension attached to the rear frame of a first semitrailer which allows for a fifth wheel connection point for the second semitrailer. This combination has one less articulation point than the conventionally connected truck tractor semitrailer combination. A "B-train" assembly is excluded from the measurement of trailer length when used between the first and second trailer of a doubles combination. However, when attached to the rear of a single trailer or second trailer of a doubles combination, it is included in the length measurement.

8. A front coupler is excluded from the measurement of trailer length. This device is an integral part of combination road-and-rail intermodal freight semitrailers. It is an energy efficient device when used to couple trailers together as rail-cars to form a train. When used on the highway, it would be a non-load carrying item projecting forward from the front wall of the trailer, but within the swing radius of the trailer, amply clearing the tractor cab.

9. Examples of trailer appurtenances excluded from determination of trailer length (list is not all-inclusive) are as follows:

(a) Front of trailer: aerodynamic device (air deflector); container chassis bolster; removable bulkhead; air compressor; electrical connector; door vent hardware; gladhand; handhold; heater; certificate holder (manifest box); stabilizing jack (anti-nosedive device);

ladder; pickup plate lip, upper coupler; hazardous materials placard; refrigeration unit; removable stakes; stake pockets; step; tarp basket; tire carrier; pump offline on tank trailer; winch for front loading trailer; front coupler (used on combination road-and-rail semitrailers).

(b) Rear of trailer: aerodynamic device (air deflector); resilient bumper block; air compressor; lift gate; handhold; pintle hook; ladder; hazardous materials placard; splash and spray suppression device; removable stakes; stake pockets; step; B-train assembly (when used between first and second trailer of a doubles combination).

Included are sketches to be used as examples in providing the FHWA's interpretation as to how the trailer length is to be measured with regard to Federal limits.

Interpretations of Width

1. Examples of appurtenances excluded from determination of commercial motor vehicle width (list is not all-inclusive) follow: corner cap; rear and side door hinges and their protective hardware; rain gutters; side marker lamps; lift pads for TOFC (piggyback) trailers; hazardous materials placards; tarp and tarp hardware; tiedown assembly on platform trailers; wall variation from true flat; weevil pins and sockets on lowbed trailers.

2. The width of a trailer is measured across the sidemost load carrying structures, support members, and structural fasteners. Any non-load carrying safety appurtenance as determined by the State or listed above which extends no more than 3 inches from each trailer side is to be excluded from the measurement of trailer width.

A docket for comments has been assigned to this interpretation statement and the public is invited to submit technical comments on these provisions. Modification to this interpretation will be made in the case of technical inaccuracy. In the case of items not included in this interpretation, consideration will be given to additional interpretations as necessary.

(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.)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carrier-size and weight.

(23 U.S.C. 315; 49 CFR 1.48)

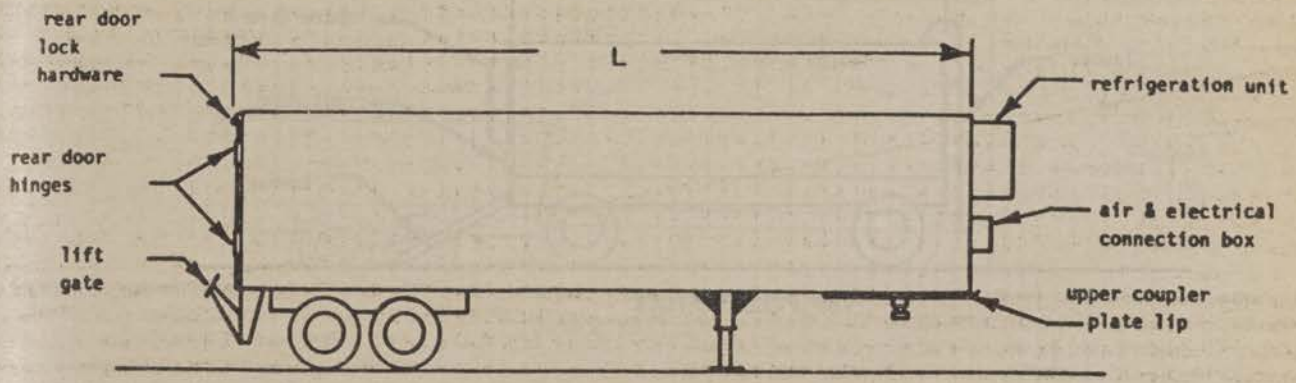
Issued on: February 13, 1987.

Ray A. Barnhart,

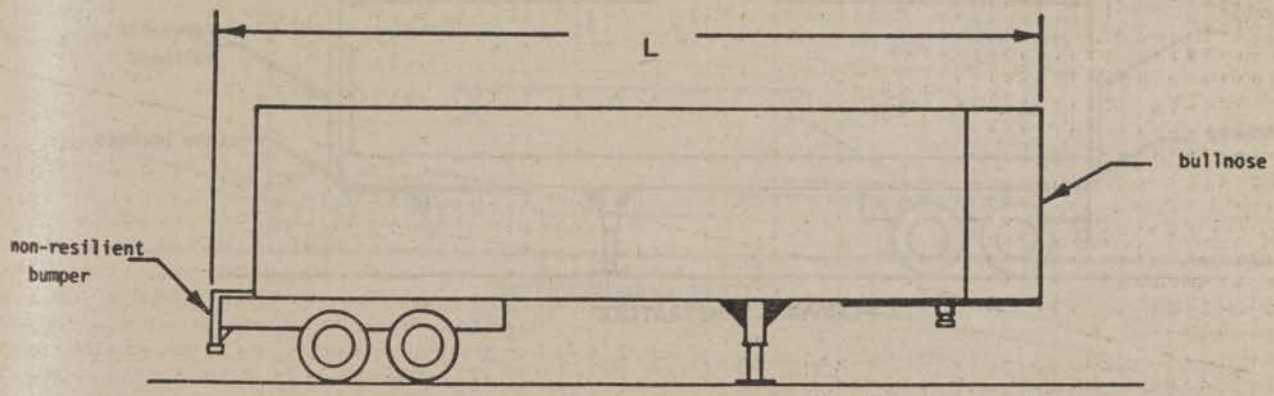
Administrator.

BILLING CODE 4910-22-M

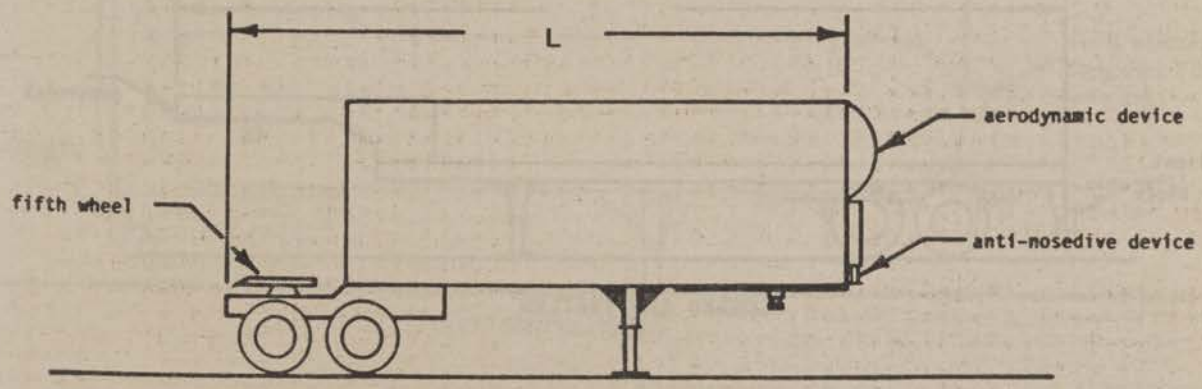
DETERMINATION OF TRAILER LENGTH, L



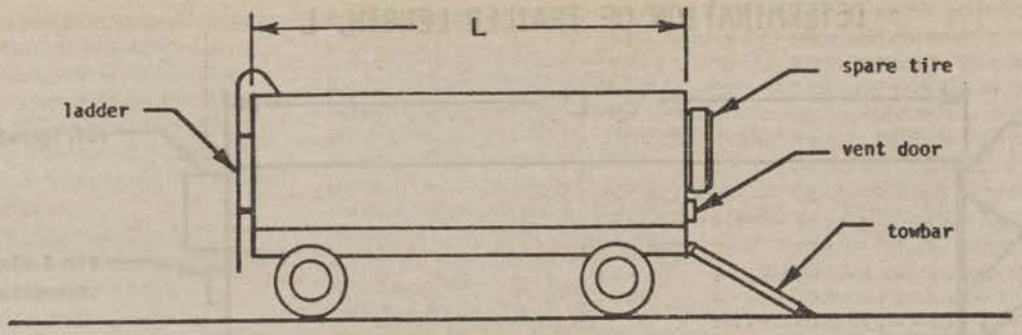
REFRIGERATED SEMITRAILER



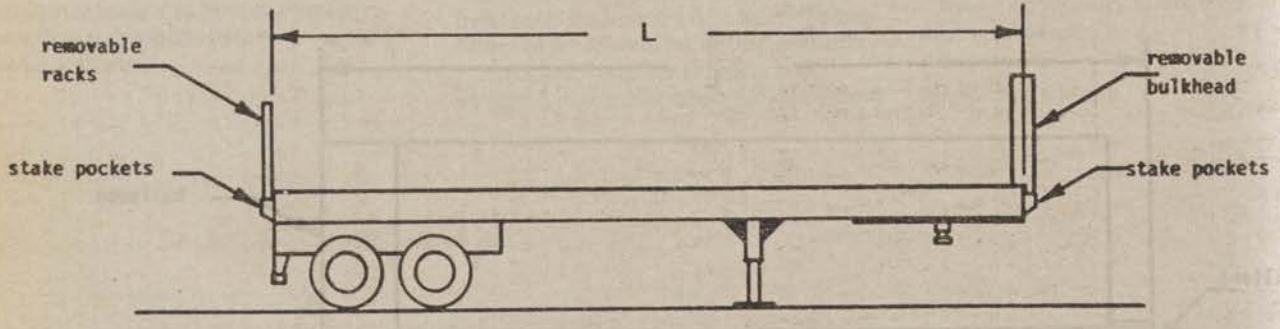
BULLNOSE VAN SEMITRAILER



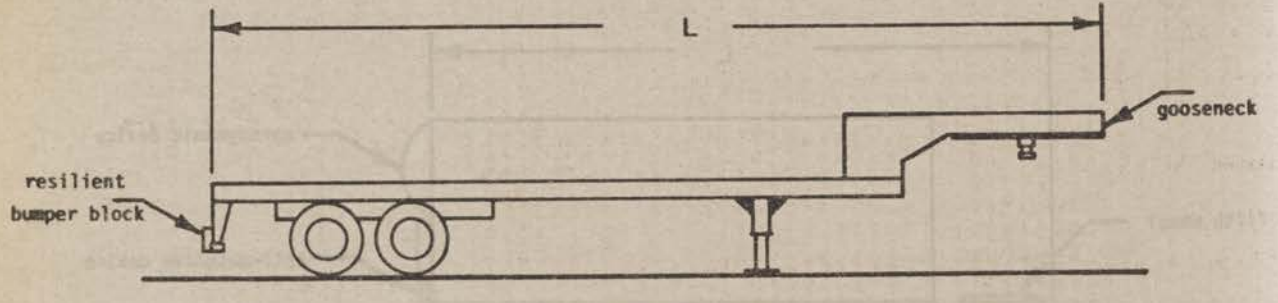
B-TRAIN VAN SEMITRAILER



VAN FULL TRAILER



PLATFORM SEMITRAILER



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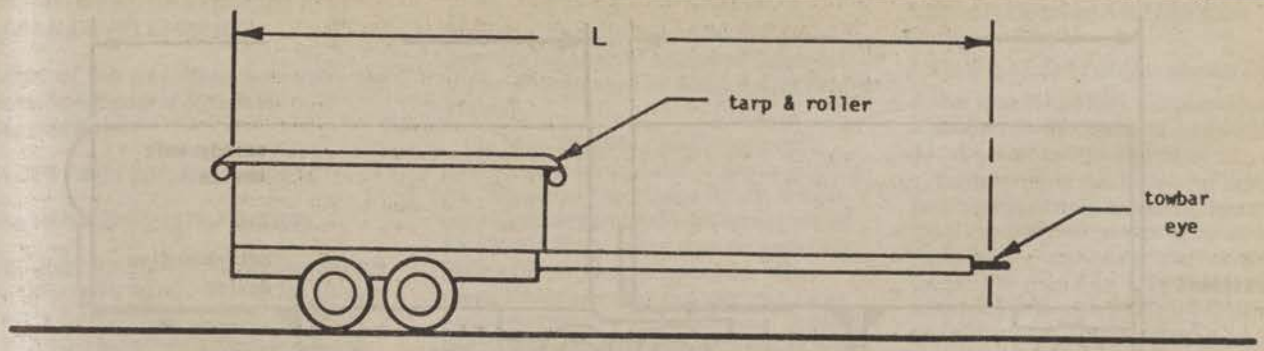

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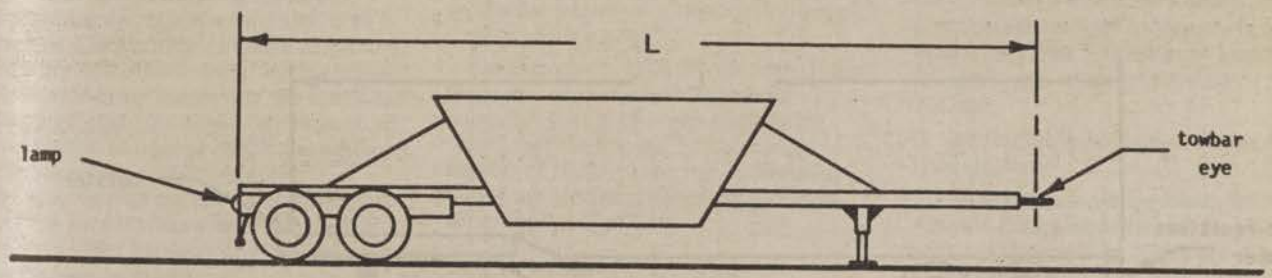

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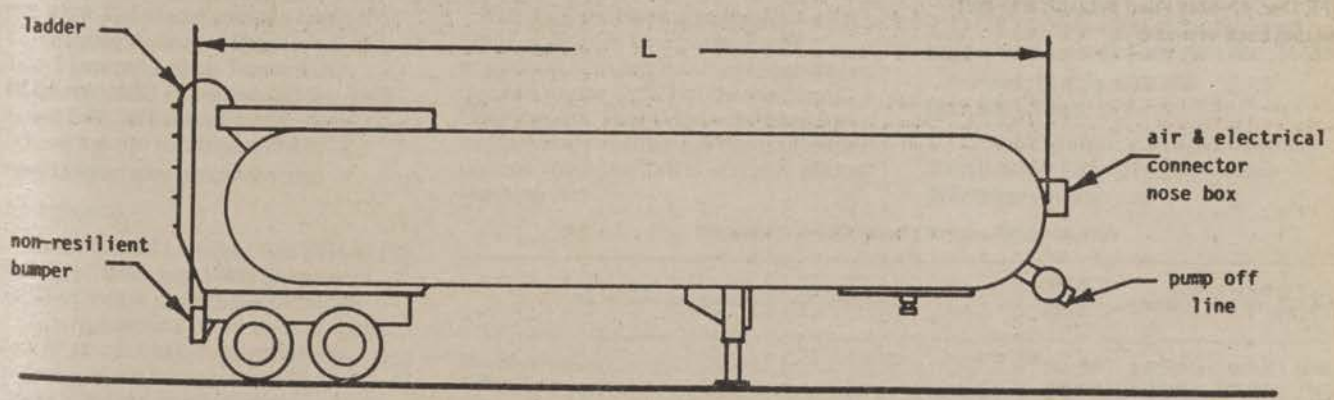

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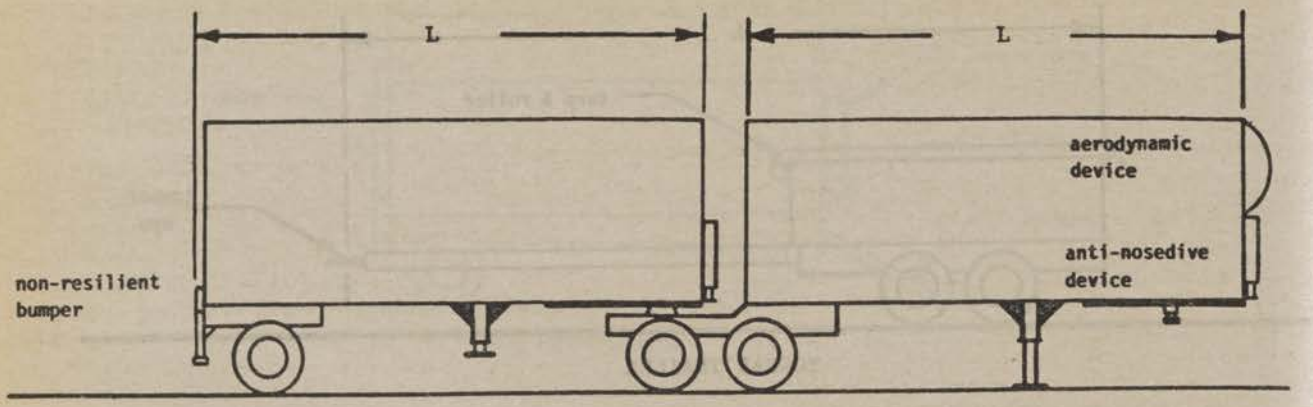

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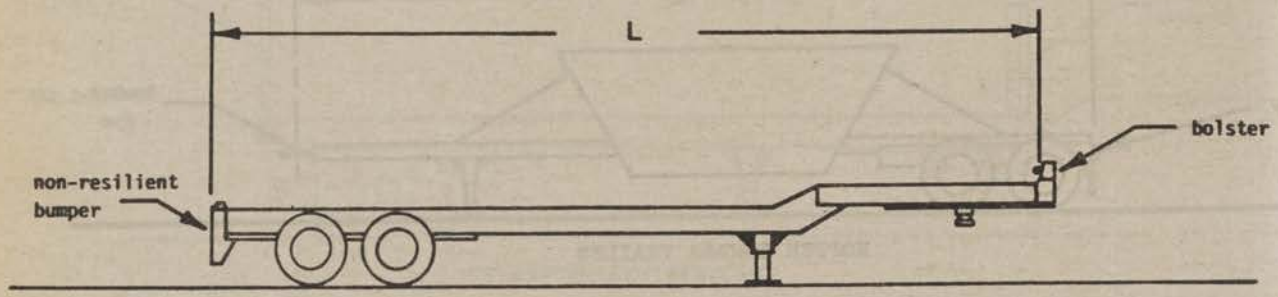

CONTAINER CHASSIS SEMITRAILER

[FR Doc. 87-5243 Filed 3-12-87; 8:45 am]
BILLING CODE 4910-22-C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-87-1677; FR-2328]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by increasing the limits for four high-cost counties—two in each of two States. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: March 13, 1987.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755-6720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160; telephone (202) 755-6880; 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1710 through1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. And, third, it made changes to the list based on a new definition of "metropolitan area".

On October 1, 1986 (51 FR 34961), the Department published its annual complete listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act and their applicable limits.

This Document

Today's document revises the high-cost mortgage amounts for New London and Tollard Counties in Massachusetts and for Warren and Oktibbeha Counties in Mississippi.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists changes for single family residences insured under section 203(b) or 234(c) of the National Housing Act.

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii)

To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Oktibbeha County, Mississippi has a one-family limit of $73,300. The combination home and lot loan limit for Oktibbeha County is $73,500×.80, or $58,640.

B. Section 2(b)(1)(E). Lot only (excluding Alaska, Guam and Hawaii)

To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Oktibbeha County, Mississippi has a one-family limit of $73,300. The lot-only loan limit for Hampden County is $73,500×.20, or $14,660.

C. Section 2(b)(2). Alaska, Guam and Hawaii limits

The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam and Hawaii are as follows:

1. For manufactured homes: $56,700 ($40,500×140%).

2. For combination manufactured homes and lots: $75,600 ($54,000×140%).

3. For lots only: $18,900. ($13,500×140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits

REGION I—HUD FIELD OFFICE—BOSTON, MA

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
New London County	$86,450	$97,350	$118,300	$136,500
Tollard County	90,000	101,300	122,650	142,650

REGION IV—HUD FIELD OFFICE—JACKSON, MS

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Warren County	$80,000	$90,100	$109,450	$126,300
Oktibbeha County	73,300	82,600	100,350	115,800

Dated: March 5, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-5435 Filed 3-12-87; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 203

[Docket No. R-87-1306; FR-2252]

Eligibility Requirements; Mortgagee Approval; Correction

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner—HUD.

ACTION: Final rule, correction.

SUMMARY: This document corrects two erroneous cross references contained in a final rule setting forth the approval requirements for mortgagees participating in HUD's mortgage insurance programs. The rule was published in the **Federal Register** on February 5, 1987 (52 FR 3606).

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone (202) 755-7055. (This is not a toll-free number.)

Accordingly, the following correction is made in FR Doc. 87-2303 published on February 5, 1987 as follows:

§ 203.7 [Corrected]

On page 3611, in the third column, paragraph (c) of § 203.7 is corrected by changing the reference to "section 244(g)" to read "section 244(f)" and by changing the reference to "section 24" to read "section 244".

March 9, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87-5374 Filed 3-12-87; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of April 1987.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), 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: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533(b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

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

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

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

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

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

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_x are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_y
. .																
April 1987	.0825	.08	.0775	.075	.0725	.07	.07	.07	.07	.07	.065	.065	.065	.065	.065	.05875

Issued at Washington, DC, on this 4th day of March 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-5444 Filed 3-12-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Surface Coal Mining and Reclamation Operations Under the Federal Lands Program; State-Federal Cooperative Agreements, Utah

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is adopting a cooperative agreement between the Department of the Interior (Department) and the State of Utah (State) for the regulation of surface coal mining and reclamation operations and certain coal exploration operations on Federal lands in Utah. Such a cooperative agreement is provided for under section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This final rule provides the terms of the cooperative agreement.

EFFECTIVE DATE: April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Fred Block, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: (202) 343-5145.

SUPPLEMENTARY INFORMATION:

I. Background

The State of Utah's Application

Section 523(c) of SMCRA, 30 U.S.C. 1201 *et seq.*, and the implementing regulations at 30 CFR Parts 740 and 745, allow a State and the Secretary of the Interior (Secretary) to enter into a permanent program cooperative agreement if the State has an approved State program.

Permanent program cooperative agreements are authorized by section 523(c) of SMCRA, which provides that "any State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has necessary personnel and funding to fully implement such a cooperative agreement in accordance with the provisions of [SMCRA]" (30 U.S.C. 1273(c)).

On March 3, 1980, Utah submitted its proposed permanent regulatory program. The Secretary reviewed and partially approved and partially disapproved the permanent regulatory program on October 24, 1980 (45 FR 47481). Utah resubmitted its program on December 23, 1980. The Secretary conditionally approved the Utah program on January 21, 1981 (46 FR 5899).

Utah submitted a proposed permanent program cooperative agreement as part of its March 3, 1980, proposed permanent program submission. On February 3, 1982, Utah submitted a revised permanent program cooperative agreement.

OSMRE initially proposed the Utah cooperative agreement in a notice published in the **Federal Register** on March 31, 1982 (47 FR 13738). That notice announced that a public comment period would close on June 1, 1982, and tentatively scheduled a public hearing for May 13, 1982. Because no one asked to testify at the hearing, it was cancelled on May 10, 1982 (47 FR 20002).

OSMRE completed its first interim oversight report in March 1982. In October 1982, OSMRE completed a formal evaluation of the Utah program, recommending changes to improve performance of permitting, inspection, and enforcement responsibilities. OSMRE deferred further action on the cooperative agreement until those changes were implemented.

The State revised or established new procedures in implementing its program, which OSMRE reevaluated in its FY '85 State program oversight evaluation. Based on that annual report, OSMRE determined that the State had substantially resolved earlier concerns.

On April 4, 1984, the State of Utah submitted a revised permanent program cooperative agreement, which OSMRE proposed and solicited comment on in the **Federal Register** of February 19, 1986 (51 FR 6082), and which is the subject of this rulemaking.

Section 745.11(b) of OSMRE's regulations require that certain information be submitted with a request for a permanent program cooperative agreement, if not previously submitted in the State program. The State submitted an initial draft proposed permanent program cooperative agreement, and supporting information required by 30 CFR 745.11(b), on March 3, 1980. Most of the information relating to the budget, staffing, equipment, organization and duties of the State regulatory authority, the Utah Division of Oil, Gas and Mining (DOGM), was described in Utah's Proposed Permanent Coal Program Text. Also, the Attorney General of State of Utah submitted a written certification that no State statutory, regulatory or other legal constraint exists which would limit the capability of the Department of Natural Resources, acting through DOGM, to fully comply with section 523(c) of SMCRA, as implemented by 30 CFR Parts 740 and 745.

Relation to the Federal Lands Program of SMCRA

The nature and extent of the Secretary's ability to delegate authority for surface coal mining operations on Federal lands to States through cooperative agreements was a subject of a Federal District Court opinion in *In Re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79-1144 (D.D.C.; July 6, 1984). The Utah Cooperative Agreement (Agreement) is consistent with that opinion, and provides for Secretarial delegation of authority under SMCRA and retains the Secretary's non-delegable responsibilities under the Mineral Leasing Act (MLA).

Although OSMRE has not yet amended the scope of the Federal lands program, 30 CFR Chapter VII, Subchapter D, to be consistent with the District Court decision, this agreement encompasses the salient features of that decision. If changes to the Federal lands program are adopted which are not covered by this Agreement, OSMRE and the Secretary will promptly initiate the steps necessary to conform the Agreement.

OSMRE had proposed a cooperative agreement with the term "lands subject to the Federal lands program" in order to ensure that changes to the applicability of the Federal lands program would not require changes to this agreement. However, for clarity OSMRE has adopted the phrase "Federal lands" instead.

II. Discussion of Rules Adopted and Response to Public Comment on Proposed Rules

A summary of the final Agreement appears below. The proposed Agreement, which was published in the **Federal Register** on February 19, 1986, announced that the public comment period would close on March 21, 1986 and tentatively scheduled a public

hearing on March 13, 1986. Because no one asked to testify at the hearing, it was cancelled, as provided in the February 19, 1986 Federal Register notice.

The agreement has been revised and modified in response to public comments, including those submitted in response to the initially proposed rule which was published on March 31, 1982, and further discussions with the State of Utah. Other organizational and editorial changes have been made for clarity and to improve readability, logical presentation and consistency. Throughout the document the acronym "OSM" for the Office of Surface Mining Reclamation and Enforcement has been changed to "OSMRE." The acronym "SMCRA" for the Surface Mining Control and Reclamation Act" is used in place of the term "Federal Act."

Article I: Introduction, Purposes, and Responsible Agencies

Paragraph A of Article I sets forth the legal authority for the Agreement, which is provided by section 523(c) of SMCRA. This paragraph also states that the Agreement provides for State regulation of coal exploration operations not subject to 43 CFR Part 3480 and surface coal mining and reclamation operations on Federal lands in Utah.

Coal exploration prior to commencement of mining will be handled by the Bureau of Land Management (BLM) in accordance with 43 CFR Part 3480, Subparts 3480 through 3487. Background and application procedures for exploration after commencement of mining within an approved permit area will be handled by the State.

One commenter was concerned that the division of responsibility between BLM and DOGM/OSMRE on managing exploration on leased areas on and after the commencement of mining was not addressed in the agreement. This issue will be addressed within the framework of the revised Memorandum of Understanding (MOU) between BLM and OSMRE, which is undergoing revision. The revised terms of the MOU will clarify the respective agency's responsibilities in this area, which will apply nationwide.

Paragraph B sets forth the purposes of the agreement, which are to foster Federal-State cooperation in regulating surface coal mining and reclamation operations and activities, and coal exploration not subject to 43 CFR Part 3480, Subparts 3480 through 3487; minimize intergovernmental overlap and duplication, and apply the State program uniformly and effectively. One commenter noted that although one of the stated purposes of the Agreement is to minimize intergovernmental overlap and duplication, it appears that much overlap would still occur between OSMRE and DOGM. The Agreement will eliminate overlap and duplication to the maximum extent practicable by delegating responsibilities under the Federal lands program regulations to DOGM.

These delegated responsibilities include review and approval, conditional approval or disapproval of permit applications, revisions or renewals, and applications for transfer, sale, and assignment of such permits; consultation with and obtaining the consent, as necessary, of the Federal land management agency with respect to post-mining land use and any special requirements necessary to protect non-coal resources; consultation with and obtaining the consent, as necessary, to the BLM with respect to requirements relating to development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation operations and activities involving leased Federal coal; approval and release of performance bonds, liability insurance; responsibility for inspection, enforcement and civil penalty activities; review and approval of exploration operations not covered by other applicable regulations; and preparation of documentation to assist OSMRE in complying with the National Environmental Policy Act (NEPA), except for those specified non-delegable NEPA requirements.

Paragraph C names the DOGM as the agency responsible for administering the Agreement on behalf of the Governor of Utah (Governor), and OSMRE as the agency responsible for administering the Agreement on behalf of the Secretary.

Although DOGM will have the primary responsibility for review and approval of the Permit Application Package (PAP), the Secretary reviews certain portions to make his non-delegable determinations under SMCRA, MLA, and other Federal laws including NEPA. Normally all contact with the applicant on reivew of the PAP will be handled by DOGM.

Aritcle II: Effective Date

Article II provides that after it has been signed by the Secretary and the Governor, the Agreement becomes effective 30 days after publication as a final rule in the Federal Register. It remains in effect until terminated as provided in Article XI.

Article III: Definitions

Article III provides that any terms and phrases used in the Agreement have the same meanings as set forth in SMCRA and the State act, State regulations promulgated pursuant to those acts, 30 CFR Parts 700, 701, and 740, and the approved State program (Program). Defining terms and phrases in this manner ensures consistency between applicable regulations and the Agreement. Where there are conflicts in definitions, those included in the Program will apply. The final cooperative agreement has deleted the exception to the applicability of State Program definitions in the proposed agreement where such definitions conflicted with non-delegable responsibilities of the Secretary. OSMRE knows of no such conflicts in definitions that might occur and finds the exception to be unnecessary and confusing.

In the final Agreement, Article III has been revised slightly for the sake of clarity and to eliminate redundancy in referring to rules pursuant to various Federal and State acts.

Article IV: Applicability

Article IV states that the laws, regulations, terms, and conditions of the Program are applicable to federal lands in Utah, except as otherwise stated in the Agreement, SMCRA, 30 CFR 740.4, 740.11(a), and 745.13, and other applicable laws, Executive Orders, or regulations. This provision is consistent with the Federal lands program, which made the Program apply to Federal lands in Utah. For the sake of clarity and completeness, a statement that the State regulatory program is applicable to surface coal mining and reclamation operations on Federal lands within the State, has been added to the text of the final agreement.

The reference to the Program is intended to encompass the Program approved on January 21, 1981, and any amendments thereto which are approved in accordance with 30 CFR 732.17. Excluded from the scope of the Agreement are the authorities and responsibilities reserved to the Secretary pursuant to SMCRA, 30 CFR 740.4 and 745.13, and other applicable laws, Executive Orders, or regulations.

Article V: General Requirements

Article V mutually binds the Governor and the Secretary to the provisions of the Agreement.

Paragraph A requires DOGM to continue to have authority under State law to carry out the Agreement.

Paragraph B (Funds) provides that upon application for funds, the State shall be reimbursed by OSMRE pursuant to section 705(c) of SMCRA if

necessary funds have been appropriated to OSMRE by Congress. Section 705(c) of SMCRA provides that a State with a cooperative agreement may receive an increase in its annual grant for the development, administration and enforcement of a State program on Federal lands by an amount which the Secretary determines is approximately equal to the amount the Federal government would otherwise have expended to regulate surface coal mining and reclamation operation on the Federal lands within the State. See 30 U.S.C. 1285(c). The reference in section 705(c) to section 523(d) is obviously a typographical error; the correct reference is section 523(c). The regulations implementing section 705(c) appear at 30 CFR 735.16 through 735.26.

If, when requested by the State, adequate funds have not been appropriated, OSMRE and the DOGM will meet and decide on appropriate measures to ensure that mining operations are regulated in accordance with the approved State program. Any funds granted to the State pursuant to the Agreement will be reduced by the amount of any fees collected by the State that are attributable to the Federal lands covered by the Agreement, in accordance with the Office of Management and Budget (OMB) Circular A–102 (Uniform Requirements for Assistance to State and Local Governments), Attachment E (Program Income).

Paragraph C of Article V requires the State to make annual reports to OSMRE with respect to compliance with this Agreement. Paragraph C also provides for a general exchange of information developed under the Agreement, unless such an exchange is prohibited by Federal law. Final evaluation reports prepared by OSMRE on State administration and enforcement of this Agreement will be provided to DOGM. The Agreement requires that DOGM's comments on the report be appended before being sent to Congress and other interested parties.

Paragraph D requires DOGM to maintain the necessary personnel to fully implement this Agreement.

Paragraph E requires that DOGM avail itself of the facilities necessary to carry out the requirements of the Agreement. This provision ensures that the State has access to and will utilize any resources necessary to conduct inspections, investigations, studies, tests, and analyses required to fulfill the requirements of this Agreement.

Paragraph F of Article V concerns permit application fees and civil penalties. Permit fees will be determined according to 40–10–6(5), Utah Code Annotated 1953 as amended, UMC/SMC 771.25 of the State regulations, and the applicable provisions of the Program and Federal law. Permit fees will be considered program income and the State would retain all fees from operations on Federal lands and deposit them with the State Treasurer. The State will report the amount of these fees in the financial status report required under 30 CFR 735.26. State funding (under paragraph B of Article V) will be reduced by the amount collected from mining on Federal lands. Civil penalties or fines collected by the State will not be considered Program income and will be deposited into a State abandoned mine fund.

OSMRE has proposed rules governing the collection of fees for certain activities related to the review of permits and mining plans. (50 FR 7522; February 22, 1985). As proposed, the permit fee rule would involve recovery by the Department of costs incurred by the Department; it would not affect fees charged by the State. Should the final permit fee rule require modification of any cooperative agreement, OSMRE will propose appropriate changes in the **Federal Register.**

Article VI: Review of a Permit Application Package

Paragraphs A through C of Article VI generally describe the procedures that the State and OSMRE will follow in the review and analysis of permit application packages (PAP) for operations on Federal lands.

"Permit application package" is a term adopted by OSMRE in the Federal lands program (48 FR 6912, February 16, 1983). It is the material submitted by an applicant proposing to mine on Federal lands, including applications for permit revisions and renewals. OSMRE adopted the term because there are requirements for mining on Federal lands in addition to those required by a permit application under the approved State program for non-Federal lands. For example, operations on Federal lands may be subject to requirements of the Federal land management agency under Federal laws other than SMCRA. The package concept allows for such information to be included with the permit application required by the approved State program. See the definition of "permit application package" under 30 CFR 740.5.

OSMRE is delegating to DOGM responsibilities with regard to review of the PAP delegable under the Federal lands program regulations implementing SMCRA. These include review and approval, conditional approval or disapproval of permit applications, revisions or renewals, and applications for transfer, sale and assignment of such permits; consultation with and obtaining the consent, as necessary, of the Federal land management agency with respect to post-mining land use and any special requirements necessary to protect non-coal resources; consultation with and obtaining the consent, as necessary, of the BLM with respect to requirements relating to development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation activities involving leased Federal coal; review and approval of exploration operations not covered by other applicable regulations; and preparation of documentation to comply with the NEPA, except for those specified non-delegable NEPA requirements.

Proposed paragraph A required an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit copies of the PAP to both DOGM and the Secretary. For consistency with 30 CFR 740.13(b), and the purposes of this agreement that DOGM be the primary contact with the applicant, final paragraph A requires the applicant to submit the required copies of the PAP to DOGM. DOGM will provide OSMRE and other Federal agencies with an appropriate number of copies of the PAP.

The requirement in proposed paragraph A that DOGM require the applicant to include supplemental information required by the Federal land management agency has been expanded. Where section 522(e)(3) of SMCRA applies, DOGM will work with the agency with jurisdiction over any publicly owned park or historic property included in the National Register of Historic Places (NRHP) that will be adversely affected by the operation to determine whether additional information is required. This addition assures consideration of the concerns of Federal agencies who do not have jurisdiction over the area to be mined, but whose land, protected by section 522(e)(3), will be affected. In accordance with the decision of the District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation (II)* (July 15, 1985) P. 73–76, these protections apply to privately owned places listed in the NRHP, as well as publicly owned ones.

At a minimum, the PAP must satisfy the requirements of 30 CFR Part 740 and must include the information necessary for DOGM to make a determination of compliance with the approved State Program, and for appropriate Federal

agencies to make determinations of compliance with applicable requirements of Federal laws and regulations for which they are responsible. Proposed paragraph A did not specifically address OSMRE information needs; for clarity, final paragraph A states that any information necessary for OSMRE to determine compliance with SMCRA and other Federal laws, executive orders, and regulations for which OSMRE is responsible, must be included in the PAP.

Paragraph B of Article VI describes the procedures that DOGM and OSMRE will follow in review of a PAP where leased Federal coal is not involved.

Paragraph B.1. has been revised to delegate responsibilities to DOGM to the extent authorized in 30 CFR 740.4(c)(1), (2), (4), (6) and (7). The phrase "to the extent authorized" means that the exceptions to delegable responsibilities identified in 30 CFR 740.4(c) cannot be removed from OSMRE responsibility. The final rule adds 740.4(c)(2) which was not included in the proposed rule. The responsibilities, delegated to DOGM, under 30 CFR 740.4(c)(2), provide for consultation with and obtaining the consent of the Federal land management agency with respect to post-mining land use and special requirements necessary to protect non-coal resources. These responsibilities are delegated to DOGM in the final cooperative agreement to assure a more efficient administrative approach when DOGM is the sole decisionmaker (i.e. no Secretarial mining plan need be approved) and to minimize governmental overlap and duplication. In such cases DOGM will coordinate its action directly with Federal agencies.

Also, to assure a more efficient administrative approach, DOGM, rather than OSMRE as proposed under paragraph B.3, has been delegated the responsibility for obtaining, except for non-significant revisions or amendments, the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. The exception for non-significant revisions or amendments has been added for clarity and for consistency with SMC/UMC Part 788, but does not restrict DOGM from consulting with such other agencies. For organizational purposes, these provisions are included under final paragraph B.1, rather than under paragraph B.3. as proposed.

For consistency with the review procedures under paragraph C of Article VI, the following provisions have been added to final paragraph VI.B.1: other Federal agencies will be requested to furnish their findings or requests for additional information to DOGM within 45 working days of the date of receipt of the PAP; OSMRE will assist DOGM in obtaining this information, upon request; and responsibilities and decisions delegable to DOGM may be specified in working agreements with OSMRE with the concurrence of any involved Federal agency.

Proposed paragraph VI B.1 included delegation to DOGM of the inspection and enforcement activities identified in 30 CFR 740.4(c)(5); because that regulation refers to procedures that are addressed in Article VII and VIII, it has been deleted here.

Paragraph B.2. assigns to DOGM the primary responsibility for the analysis, review, and approval or disapproval of the permit application component of the PAP. For clarity, the provision in proposed paragraph B.5 of this Article that DOGM will review the PAP for compliance with the Program and State law and regulations has been included here. DOGM will also be the principal contact for the applicant on issues concerned with the development, review and approval of the PAP or an application for permit revision or renewal for mining on Federal lands in Utah not requiring a mining plan pursuant to the MLA. DOGM will be responsible for informing applicants of determinations.

Proposed paragraph B.3 stated that OSMRE will make its non-delegable determinations under SMCRA. Final paragraph B.3. states that the Secretary will make his determinations, which cannot be delegated to the State, under SMCRA; most of these have been delegated to OSMRE, some to BLM, and some remain with the Secretary. OSMRE also has non-delegable responsibility for the exceptions under 30 CFR 740.4(c)(7). The provision in proposed paragraph B.3. which would have required OSMRE to obtain the views and determinations of other Federal agencies that would be affected by operations proposed under the PAP has been changed by delegating that responsibility to DOGM. This provision is now included under final paragraph B.1. of Article VI.

The provision in proposed paragraph B.3, which dealt with the prohibitions or limitations of section 522(e) of SMCRA has been revised and expanded, and included under new paragraph B.1. of Article X of the Agreement.

Final paragraph B.4 retains most of the original provisions of proposed paragraph B.4. OSMRE will provide technical assistance to DOGM when requested, if available resources allow. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to DOGM. OSMRE will have access to DOGM files concerning operations on Federal lands. The Secretary reserves the right to act independently of DOGM and to carry out responsibilities under laws other than SMCRA. OSMRE will send to DOGM copies of all resulting correspondence that may have a bearing on decisions regarding the PAP.

For consistency with the review procedures in paragraph C of this Article, final paragraph B.4. also includes provisions for coordination between OSMRE and DOGM during the review process, for OSMRE to provide assistance to DOGM in resolving conflicts with land management agencies, and for DOGM to inform OSMRE of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies.

The provision in proposed paragraph B.4. which dealt with determinations of valid existing rights (VER) has been revised and expanded and included under new paragraph B of Article X. Compatibility determinations have also been moved to paragraph B of Article X.

The provision in proposed paragraph VI.B.5. that DOGM review the PAP for compliance with the Program and State law and regulations has been incorporated into final paragraph VI.B.2. Proposed paragraph B.6 has been renumbered as final paragraph B.5; it states that the permit issued by DOGM on Federal lands will include terms or conditions imposed by the Federal land management agency. For clarity, a statement has been added that DOGM will work with the National Park Service (NPS) to develop mutually agreed upon terms and conditions for inclusion in the permit where a proposed operation on Federal lands has valid existing rights and will adversely affect such areas. DOGM will also include in a permit the terms and conditions required by other applicable Federal laws and regulations. DOGM will give written notification to any involved land management agency, the applicant, and OSMRE of DOGM decisions and findings on the PAP. The proposed rule required that a copy of the written findings and the permit will also be submitted to OSMRE; however, in the final rule these documents will be provided to OSMRE upon request.

Paragraph C of Article VI discusses review procedures for PAPs where leased Federal coal is involved and, consequently, where the Secretary must make a decision on a mining plan.

Under final paragraph C, DOGM has assumed additional responsibilities that in the proposed Agreement were to be performed by OSMRE under 30 CFR 740.4(c) (2) and (3). Paragraph C has been revised and reorganized accordingly to reflect these changes in delegated authority.

Under final paragraph C.1., DOGM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6), and (7), to the extent authorized.

As proposed, DOGM will, to the extent authorized, take on the delegable responsibilities for review and approval, disapproval or conditional approval of permit applications, revisions or renewals thereof, and applications for transfer, sale and assignment of such permits under 30 CFR 740.4(c)(1). OSMRE will assist DOGM in this review, upon request, to the extent possible. The Secretary retains those responsibilities that cannot be delegated to DOGM including those under the Federal lands program, MLA, NEPA, this agreement, and other applicable Federal laws. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws. The Secretary will carry out his responsibilities in a timely manner and avoid, to the extent possible, duplication of those responsibilities delegated to the State in this Agreement and the Program. Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSMRE and DOGM, with concurrence of any Federal agency involved, and without amendment to this Agreement.

As proposed, paragraph C.2. designates DOGM as the primary contact for applicants in matters regarding review of the PAP. As such, DOGM will inform the applicant of all joint State-Federal determinations. DOGM will provide OSMRE with copies of correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will provide DOGM with copies of all correspondence with the applicant which may have a bearing on the PAP. OSMRE will not ordinarily contact the applicant regarding the PAP, although OSMRE is not prevented from doing so. On matters concerned exclusively with 43 CFR Part 3480, Subparts 3480 through 3487, BLM will be the primary contact with the applicant.

For clarity, final paragraph C.2. also recognizes the role of BLM in reviewing the resource recovery and protection plan and other MLA-related components of a mining plan, and recommending Secretarial approval of the MLA-related components of the mining plan.

To ensure that DOGM and OSMRE carry out their respective responsibilities for permit approval and mining plan approval, final paragraph C.2 states that BLM and other Federal agencies will provide DOGM, and OSMRE as necessary, with their comments and concurrences on the operation proposed in the PAP.

The Secretary reserves the right to act independently of DOGM to carry out departmental responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

Under final paragraph C.2, additional responsibilities have been delegated to DOGM, to the extent authorized, that were not in the proposed agreement. Pursuant to 30 CFR 740.4(c)(2), DOGM will consult with and obtain the consent of the Federal land management agency concerning post-mining land use and protection of non-coal resources.

Under 30 CFR 740.4(c)(3), DOGM will consult with and obtain the consent of the BLM with respect to development, production, and recovery of mineral resources where operations involve leased Federal coal. These responsibilities are delegated to DOGM in the final cooperative agreement to assure more efficient administration and to minimize governmental overlap and duplication. DOGM will coordinate its actions directly with Federal agencies. In addition to DOGM's coordination with Federal agencies, there will be a certain amount of necessary coordination between OSMRE and other Federal agencies pursuant to OSMRE's requirement to recommend Secretarial approval of the mining plan. Where necessary, OSMRE will coordinate directly with BLM and other Federal agencies.

DOGM will also obtain the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP.

DOGM will request that the involved Federal agencies submit their findings or any requests for additional data to DOGM and when necessary to OSMRE within 45 days of receiving the PAP.

The review of the PAP will be done to ensure timely identification, communication and resolution of issues relating to statutory requirements of Federal agencies. DOGM will request that other Federal agencies inform DOGM and OSMRE of their analyses and conclusions.

Two commenters noted that 45 days may not be adequate time for Federal agencies to review a PAP in all cases, and one suggested that an extension be provided. OSMRE believes that a reasonable time period needs to be established for the processing of a PAP, and based on previous experience a 45 day time requirement seems to be adequate. OSMRE believes that in most cases, involved agencies should be able to meet this deadline, but if a problem should arise, DOGM and the agency involved should be able to work out an acceptable solution.

Under final paragraph C.3, DOGM will, to the extent authorized, take on the delegable responsibilities for approval and release of performance bonds, liability insurance (30 CFR 740.4(c)(4)); review and approval of exploration operations not subject to 43 CFR Part 3480 (30 CFR 740.4(c)(6)); and preparation of documentation to comply with the requirements of NEPA (30 CFR 740.4(c)(7)). Under paragraph C.3, OSMRE will retain the non-delegable responsibilities for NEPA Documents Under 30 CFR 740.4(a)(7)(i)–(vii). Proposed paragraph VI C.3 included delegation of 30 CFR 740.4(c)(5), which has been deleted from paragraph VI C.3 because that regulation deals with regulation and enforcement procedures that are addressed under articles VII and VIII.

OSMRE will assist DOGM upon request, by coordinating resolution of conflicts with the involved Federal agencies and by helping to schedule meetings between the agencies and DOGM.

OSMRE will exercise its responsibilities in a timely manner and will provide DOGM with a work product within 50 days of receiving DOGM's request for assistance in reviewing the permit application unless a different time is agreed upon.

OSMRE will be responsible for Federal lessee protection bond requirements under 30 CFR 740.15(c).

Paragraph C.4 describes the procedures that OSMRE and DOGM will follow in reviewing the PAP. OSMRE and DOGM will coordinate their activities and exchange information during the review process. DOGM will review the PAP to ensure compliance with the Program and State law and regulations. OSMRE will review the operation and reclamation plan portion of the PAP to ensure compliance with the non-delegable responsibilities of SMCRA and for compliance with other Federal laws and regulations. OSMRE and DOGM will plan and schedule PAP review and each will choose a project

leader to serve as the primary points of contact for both during the review process. OSMRE will provide the State with its review comments within 50 days of receiving the PAP. A provision has been added to final paragraph C.4 that allows DOGM and OSMRE to agree on a different time frame when necessary. OSMRE will specify any requirements for additional data. To the extent practical DOGM will provide OSMRE with all available information that may aid OSMRE in preparing any findings.

The State will prepare a State decision package indicating whether the PAP complies with the Program. The review and finalization of the State's decision package will be conducted in accordance with procedures agreed upon by DOGM and OSMRE for processing PAPs.

DOGM may issue a permit pursuant to SMCRA on Federal lands before the necessary Secretarial approval of the mining plan. However, DOGM must advise the operator that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. Further, when issuing a permit prior to mining plan approval, DOGM will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions of the Secretarial mining plan approval.

One commenter recommended that the permit not be issued prior to the Secretarial decision on the mining plan on the basis that it may cause confusion for the operator and may not be beneficial to the overall recovery of the coal resource on Federal as well as non-Federal lands. OSMRE does not agree. Subchapter D of 30 CFR Chapter VII does not require the Secretary to approve the mining plan prior to approval of the permit application. This is consistent with the intended purpose of a cooperative agreement, to provide States with an independent role in the approval of permit applications under SMCRA, even though mining of Federal coal is precluded until the mining plan is approved.

The permit issued by the DOGM will be required to include the terms and conditions required by the lease and other applicable Federal laws and regulations. For completeness, and for consistency with paragraph B of this Article, final paragraph C.4 states that the permit will include any conditions required by applicable laws and regulations of the land management agencies relating to post mining land use as well as those of other affected agencies with jurisdiction over the area of the proposed operation.

For completeness, the provisions found under final paragraph VI.B.5.(c) that were not in proposed paragraph VI.C.4 have been added as paragraphs IV.C.4 (h) and (i). Final paragraph 4(h) states that where a proposed operation on Federal lands has valid existing rights and will adversely affect an NPS unit, DOGM will also work with the NPS to develop mutually agreed upon terms and conditions for the permit for protection of the NPS unit. Article X of this agreement specifies procedures to be followed for determining whether exceptions to the prohibitions or limitations of section 522(e) of SMCRA may be granted based on the possession of valid existing rights for such areas.

Paragraph (i) states that DOGM will send a notice to the applicant, the land management agency and any agency with jurisdiction over the public park or historic property included in the NRHP affected by a decision under section 522(e)(3), and OSMRE. OSMRE will also receive a copy of the written findings and the permit.

Paragraph C.5. has been added for consistency; it contains general provisions under paragraph B.4 of Article VI not included in proposed paragraph C.4 of Article VI. Final paragraph C.5. states that OSMRE will provide technical assistance to DOGM upon request and that OSMRE will have access to DOGM files concerning operations on Federal lands.

Paragraph D of Article VI addresses review procedures for permit revisions, amendments, or renewals.

Paragraph D.1 assigns to DOGM the authority to review, approve or disapprove permit revisions, amendments or renewals. DOGM must consult with OSMRE on whether any permit revision, amendment, or renewal involving Federal lands constitutes a mining plan modification. OSMRE will inform DOGM within 30 days of receiving a copy of the proposed permit revision, renewal, or amendment as to whether it constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and DOGM will follow the procedures outlined in paragraph C of Article VI.

Under paragraph D.2, OSMRE may establish criteria to determine which permit revisions, amendments, or renewals clearly do not constitute mining plan modifications. Those meeting the criteria may be approved or disapproved by DOGM prior to contacting OSMRE.

Under Paragraph D.3., permit revisions, renewals, or amendments not constituting mining plan modifications and meeting the criteria outlined in paragraph D.2. would be reviewed and approved or disapproved by the State following the procedures outlined in paragraph B of this Article.

One commenter suggested that "minor" modifications to a mining plan dealing strictly with coal recovery under 43 CFR Part 3480 be approved by BLM prior to OSMRE/DOGM review and concurrence. These minor modifications are described as day-by-day operational matters needing immediate attention. OSMRE disagrees because 30 CFR 746.18 requires that any revision, amendment or renewal of a mining operation on Federal lands be reviewed by OSMRE to determine whether it meets the criteria for a mining plan modification requiring Secretarial approval. The Program also requires that DOGM review permit revisions and renewals, including those which involve coal recovery (UMC/SMC 778.12; 778.13). Under paragraph D.2 of Article VI of the Agreement, criteria may be established for revisions, amendments, or renewals which clearly do not constitute mining plan modifications. If the criteria are adopted, DOGM may issue approval prior to contacting OSMRE for concurrence in the determination.

Article VII: Inspections

Paragraphs A and B of Article VII specify that DOGM must conduct inspections on lands covered by this Agreement in accordance with 30 CFR 740.4(c)(5) and prepare and file State inspection reports in accordance with the Program.

Paragraph C designates DOGM as the point of contact and primary inspection authority in dealing with the operator. However, the Secretary retains the right to conduct inspections of surface coal mining and reclamation operations covered on Federal lands without prior notice to DOGM, for the purposes of evaluating the manner in which the Agreement is being carried out and insuring that performance and reclamation standards are being met.

Paragraph D states that when OSMRE intends to conduct an inspection under 30 CFR 842.11, DOGM will ordinarily be given reasonable notice of such an inspection to provide an opportunity for State inspectors to join in the inspection. When a Federal inspection is in response to a citizen complaint, such as the threat of imminent harm to the public or the environment, OSMRE would give DOGM at least 24 hours

notice, if practical. All citizen complaints not involving an imminent harm to the public or the environment will be referred to DOGM for action.

Article VII preserves OSMRE's obligation and authority to conduct inspections pursuant to 30 CFR Parts 842 and 843. The right of Federal and State agencies to conduct inspections for purposes outside the scope of the proposed cooperative agreement will not be affected.

Article VIII: Enforcement

Article VIII sets forth the enforcement obligations and authorities of OSMRE and DOGM in accordance with 30 CFR 740.4(c)(5).

Under paragraph A, DOGM has primary enforcement authority on Federal lands in accordance with the requirements of the cooperative agreement and the program. Enforcement authority given to the Secretary under other laws and orders is reserved by the Secretary.

Under paragraph B, DOGM has primary responsibility for enforcement during joint inspections with OSMRE. Paragraph B also includes the requirement that DOGM notify OSMRE prior to suspending or revoking a permit.

Paragraph C preserves OSMRE's authority to take enforcement action to comply with 30 CFR Parts 843 and 845, where OSMRE conducts an inspection or where, during a joint inspection with DOGM, the two do not agree on a particular enforcement action. Such action will be based upon SMCRA or the substantive provisions contained in the Program, but will use the Federal procedures and penalty system.

Paragraph D provides that OSMRE and DOGM notify each other of all violations of applicable regulations and all actions taken on the violations. Paragraph E provides that personnel of DOGM and OSMRE be mutually available to serve as witnesses in enforcement actions taken by either party. Finally, paragraph F specifies that this Agreement does not limit the Department's authority to enforce Federal laws other than SMCRA.

Article IX: Bonds

Under paragraph A, DOGM and the Secretary will require each operator conducting operations on Federal lands to submit a single performance bond payable to both the State and the United States. DOGM will advise OSMRE of any annual bond adjustments that may be made. All applicable State and Federal requirements must be fulfilled prior to releasing an operator from any obligation covered by the performance bond. If the Agreement is terminated, paragraph A requires that the portion of the bond covering Federal lands reverts to being payable solely to the United States. Under paragraph B, DOGM will advise OSMRE of annual adjustments to the bond and release a bond only after OSMRE concurrence. Such concurrence would include coordination with other Federal agencies having jurisdiction over the Federal lands involved. Under Paragraph C, bonds are subject to forfeiture with the concurrence of OSMRE and in accordance with the State program.

Paragraph D clarifies that the performance bond does not satisfy the obligation for a Federal lease bond under 43 CFR Subpart 3474, or for the lessee protection bond required in certain circumstances by section 715 of the Act.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights and Compatibility Determinations

Paragraph A.1 of Article X reserves to the Secretary authority to designate Federal lands as unsuitable for surface coal mining and reclamation operations and activities. The reference in the proposed rule to DOGM's authority to designate non-Federal lands as unsuitable for surface coal mining and reclamation operations and activities has been deleted because it is not relevant to this agreement.

Paragraph A.2 states that DOGM and OSMRE will notify each other of any petition to designate lands as unsuitable that could impact adjacent Federal and non-Federal lands, and solicit and consider each other's views on a petition. OSMRE will coordinate with the Federal land management agency with jurisdiction over the area covered by the petition, and will solicit comments.

The proposed Agreement addressed valid existing rights (VER) only in the most general sense. Concerns about the lack of specificity in proposed paragraphs VI. B.3. and B.4., dealing with determining the applicability of the prohibitions or limitations of section 522(e) of SMCRA, and determinations of VER for such areas, were raised by the National Park Service. The discussion of this topic has been expanded in the final Agreement to specify the responsibilities of OSMRE and DOGM for determining whether proposed mining on Federal lands would be subject to the prohibitions or limitations of section 522(e) of SMCRA, and determinations of whether VER exists for such areas.

An expanded discussion of VER in the final cooperative agreement is found in new section B of Article X, which also includes provisions for compatibility determinations pursuant to section 522(e)(2) of SMCRA.

New paragraph B.1. of Article X states that OSMRE has responsibility for processing requests for VER determinations within the boundaries of areas where mining is prohibited by section 522(e)(1) of SMCRA on all Federal lands and on non-Federal lands where mining affects Federal lands. OSMRE has the responsibility for processing requests for VER determinations on non-Federal lands within the boundaries of the National Park System where mining affects the Federal interest. "Federal interest" means: park resources, values, purposes, management objectives, or visitor experience. The Secretary will determine whether VER exists on non-Federal lands where the proposed surface coal mining operation would affect the Federal interest within section 522(e)(1) areas within the boundaries on the National Park System.

Under new paragraph X.B.2., OSMRE is responsible for processing requests for determinations of VER for proposed operations on Federal lands within the boundaries of any national forest, as identified in section 522(e)(2) of SMCRA. This authority is reserved by the Secretary in accordance with 30 CFR 745.13(o).

OSMRE will process compatibility determinations on Federal lands pursuant to section 522(e)(2) of SMCRA.

New paragraph X.B.3. states that for Federal lands, DOGM will determine, with the consultation and concurrence of OSMRE, whether the prohibitions or limitations of section 522(e)(3) of SMCRA for proposed mining operations will adversely affect units of the National Park System. Where such proposed operations on Federal lands will adversely affect units of the National Park System, DOGM will make the VER determination with the consultation and concurrence of OSMRE.

For Federal lands, DOGM will determine whether the prohibitions or limitations of section 522(e)(3) of SMCRA are applicable to proposed mining operations which will adversely affect all other public parks and historic properties listed in the NRHP in consultation with the State Historic Preservation Officer. DOGM will also make the VER determination for such lands.

Procedures are also included to consider the concerns of affected land

management agencies and for DOGM to work with the land management agency in mitigating environmental impacts.

New paragraph X.B.4. states that DOGM will process VER determinations on Federal lands for all areas limited or prohibited by sections 522(e) (4) and (5) of SMCRA as unsuitable for mining. For such operations on Federal lands, DOGM will coordinate with the affected agency and agency with jurisdiction over the proposed operation. Any Federal lands determined to be within 300 feet of the boundaries of a national park under section 522(e)(5) could also be addressed under the procedures outlined in this agreement for section 522(e)(3) areas with respect to adverse impacts on NPS units.

Article XI: Termination of Cooperative Agreement

Article XI specifies that this Agreement may be terminated as specified under 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

Article XII provides that, if terminated, a cooperative agreement may be reinstated under 30 CFR 745.16. That provision allows for reinstatement of a cooperative agreement upon application by the State after remedying the defects for which the cooperative agreement was terminated and the submission of evidence to the Secretary that the State can and will comply with all of the provisions of the cooperative agreement.

Article XIII: Amendment of Cooperative Agreement

Article XIII provides that the Agreement may be amended by mutual agreement of the Governor and Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

Paragraph A of Article XIV recognizes that the Department or the State may, from time to time, promulgate new or revised performance or reclamation requirements, or enforcement and administration procedures. If it is determined to be necessary to keep the Agreement in force, the State may request necessary legislative action and either the State or OSMRE would change or revise its regulations or promulgate new regulations, as applicable. Such changes will be made in accordance with 30 CFR Part 732 for changes to the Program and section 501 of the Act for changes to the Federal lands program.

Paragraph B requires the State and OSMRE to provide each other with copies of changes in their respective law and regulations.

Article XV: Changes in Personnel and Organization

Article XV requires DOGM and OSMRE to advise each other of substantial changes in organization, funding, staff, or other changes which could affect administration or enforcement of the Agreement.

Article XVI: Reservation of Rights

Article XVI recognizes that SMCRA, 30 CFR 745.13, and other legal authorities prohibit the Secretary from delegating certain authorities to the State. In the final Agreement, Article XVI has been revised at the request of DOGM to apply more generally to both the State and the Secretary. Article XVI states that this Agreement will not be construed as waiving or preventing the assertion of any rights in the agreement that the State or the Secretary may have under laws other than SMCRA, or their regulations, including those listed in Appendix A of this Agreement.

III. Procedural Matters

1. E.O. 12291 and Regulatory Flexibility Act

On October 21, 1982, the Department of the Interior received from the Office of Management and Budget an exemption for Federal/State cooperative agreements from the requirements of sections 3 and 7 of Executive Order 12291.

The Department has reviewed this Agreement in light of the Regulatory Flexibility Act (Pub. L. 96–354). Having conducted this review, the Department has determined that this document will not have a significant economic effect on a substantial number of small entities because no significant departure from either the State or Federal requirements already in effect will occur and no new or additional information will be required by the Agreement.

2. Paperwork Reduction Act of 1980

There are recordkeeping and reporting requirements in the Agreement which are the same as and required by the permanent program regulations. Those regulations required clearance from the Office of Management and Budget under 44 U.S.C. 3507 and were assigned the following clearance numbers:

Location of requirement	OMB clearance No.
Article VI.A. (Required by 30 CFR Part 773)	1029-0041
Article VII.A. (Required by 30 CFR Part 840)	1029-0051
Article IX.A. (Required by 30 CFR Part 800)	1029-0043

3. National Environmental Policy Act

Proceedings relating to adoption of a permanent program cooperative agreement are part of the Secretary's implementation of the Federal lands program pursuant to section 523 of the Act. Such proceedings are exempt under section 702(d) of the Act from the requirements to prepare a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Author

The author of this regulation is Dr. Fred Block, Division of Permit and Environmental Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; telephone: (202) 343–5145.

List of Subjects in 30 CFR Part 944

Coal mining; Intergovernmental relations; Surface mining; Underground mining.

For the reasons set forth herein, 30 CFR Part 944 is amended as follows.

Dated: March 5, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 944—[AMENDED]

1. The authority citation for 30 CFR Part 944 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* Pub. L. 95–87.

2. Section 944.30 is added to read as follows:

§ 944.30 State-Federal Cooperative Agreement.

The Governor of the State of Utah (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purposes and Responsible Agencies

A. Authority: This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary of the Interior under 30 U.S.C. 1253, to elect to enter into an agreement for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation

of coal exploration operations not subject to 43 CFR Part 3480 through 3487, and surface coal mining and reclamation operations and activities in Utah on Federal lands (30 CFR Chapter VII Subchapter D), consistent with SMCRA and the Utah Code Annotated (State Act) governing such activities and the Utah State Program (Program).

B. Purposes: The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and activities and coal exploration operations not subject to 43 CFR Part 3480, Subparts 3480 through 3487; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Utah in accordance with SMCRA, the Program, and this Agreement.

C. Responsible Administrative Agencies: The Utah Division of Oil, Gas, and Mining (DOGM) will be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining Reclamation and Enforcement (OSMRE) will administer this Agreement on behalf of the Secretary.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the **Federal Regiser** as a final rule. This agreement will remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement which are defined in SMCRA 30 CFR Parts 700, 701 and 740, the Program, including the State Act, and the rules and regulations promulgated pursuant to that Act, will be given the meanings set forth in said definitions.

Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the Program will apply.

Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Program are applicable to Federal lands in Utah except as otherwise stated in this Agreement, SMCRA 30 CFR 740.4, 740.11(a) and 745.13, and other applicable Federal laws, Executive Orders, or regulations.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. Authority of State Agency: DOGM has and will continue to have the authority under State law to carry out this Agreement

B. Funds: 1. Upon application by DOGM and subject to appropriations, OSMRE will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of the Federal Act, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by DOGM in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement; and provided that such State-incurred cost per permitted acre of Federal lands does not exceed the per permitted area costs for similar administration and enforcement activities of the Program on non-Federal and non-Indian lands during the same time period.

2. The ratio or cost split of Federal to non-Federal dollars allocated under the cooperative agreement will be determined by OSMRE and DOGM based on the projected costs for regulation of mines within Federal lands, in consideration of the relative amounts of Federal and non-Federal land involved. The designation of mines, based on Federal and non-federal land, will be prepared by DOGM and submitted to OSMRE's Albuquerque Field Office. OSMRE's Albuquerque Field Office and OSMRE's Western Field Operations office will work with DOGM to estimate the amount the Federal government would have expended for regulation of Federal lands in Utah in the absence of this Agreement.

3. OSMRE and the State will discuss the OSMRE Federal lands cost estimate, the DOGM-prepared list of acres by mine, and the State's overall cost estimate. After resolution of any issues, DOGM will submit its grant application to OSMRE's Albuquerque Field Office. The Federal lands/non-Federal lands ratio will be applied to the final eligible total State expenditures to arrive at the total Federal reimbursement due the State. Assuming timely submission, this ratio or cost split will be agreed upon by July of the year preceding the applicable fiscal year in order to enable the State to budget funds for the Program.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimating the regulatory costs for the following grant year. OSMRE will notify DOGM as soon as possible if such projections are unrealistic.

4. If DOGM applies for a grant but sufficient funds have not been appropriated to OSMRE, OSMRE and DOGM will promptly meet to decide on appropriate measures that will insure that mining operations on Federal lands in Utah are regulated in accordance with the Program.

5. Funds provided to the DOGM under this Agreement will be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E.

C. Reports and Records: DOGM will make annual reports to OSMRE containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). DOGM and OSMRE will exchange, upon request, except where prohibited by Federal or State law, information developed under this Agreement.

OSMRE will provide DOGM with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DOGM comments on the report will be appended before transmission to the Congress or other interested parties.

D. Personnel: DOGM will maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA the Federal lands program, and the Program.

E. Equipment and Laboratories: DOGM will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. Permit Application Fees and Civil Penalties: The amount of the fee accompanying an application for a permit for operations on Federal lands in Utah will be determined in accordance with 40-10-6(5), Utah Code Annotated 1953 as amended and UMC/SMC 771.25 of the State regulations, and the applicable provisions of the Program and Federal law. All permit fees and civil penalty fines collected from operations on Federal lands will be retained by the State and will be deposited with the State Treasurer. Permit fees will be considered program income. Civil penalty fines will not be considered program income and will be deposited in an account for use in reclaiming abandoned mine sites. The financial status report submitted pursuant to 30 CFR 735.26 will include a report of the amount of fees collected during the State's prior fiscal year.

Article VI: Review of Permit Application Package

A. Submission of Permit Application Package: DOGM and the Secretary require an applicant proposing to conduct surface coal mining and reclamation operations and activities on Federal lands to submit a permit application package (PAP) in an appropriate number of copies to DOGM. DOGM will furnish OSMRE and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by DOGM and will include any supplemental information required by OSMRE and the Federal land management agency. Where section 522(e)(3) of SMCRA applies, DOGM will work with the agency with jurisdiction over the publicly owned park, including units of the National Park System, or historic property included in the National Register of Historic Places (NRHP) to determine what supplemental information will be required.

At a minimum, the PAP will satisfy the requirements of 30 CFR Part 740 and include the information necessary for DOGM to make a determination of compliance with the Program and for OSMRE and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, and other Federal laws, Executive Orders, and regulations for which they are responsible.

B. Review Procedures Where There is No Leased Federal Coal Involved: 1. DOGM will assume the responsibilities for review of permit applications where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c) (1), (2), (4), (6) and (7). In addition to consultation with the Federal land management agency pursuant to 30 CFR 740.4 (c)(2), DOGM will be responsible for obtaining, except for non-significant revisions or amendments, the comments and determinations of other Federal agencies with jurisdiction or responsibility over

Federal lands affected by the operations proposed in the PAP. DOGM will request such Federal agencies to furnish their findings or any requests for additional information to DOGM within 45 calendar days of the date of receipt of the PAP. OSMRE will assist DOGM in obtaining this information, upon request.

Responsibilities and decisions which can be delegated to DOGM under other applicable Federal laws may be specified in working agreements between OSMRE and the State, with the concurrence of any Federal agency involved, and without amendment to this agreement.

2. DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations and activities in Utah on Federal lands not requiring a mining plan pursuant to the Mineral Leasing Act (MLA). DOGM will review the PAP for compliance with the Program and State Act and regulations. DOGM will be the primary point of contact for applicants regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

3. The Secretary will make his non-delegable determinations under SMCRA, some of which have been delegated to OSMRE.

4. OSMRE and DOGM will coordinate with each other during the review process as needed. OSMRE will provide technical assistance to DOGM when requested, if available resources allow. DOGM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE may provide assistance to DOGM in resolving conflicts with Federal land management agencies. OSMRE will be responsible for ensuring that any information OSMRE receives from an applicant is promptly sent to DOGM. OSMRE will have access to DOGM files concerning operations on Federal lands. OSMRE will send to DOGM copies of all resulting correspondence between OSMRE and the applicant that may have a bearing on decisions regarding the PAP. The Secretary reserves the right to act independently of DOGM to carry out his responsibilities under laws other than SMCRA.

5. DOGM will make a decision on approval or disapproval of the permit on Federal lands.

(a) Any permit issued by DOGM will incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conditioned on compliance with the requirements of the Federal land management agency. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect a unit of the National Park System (NPS), DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impact as set forth under Article X of this agreement.

(b) The permit will include terms and conditions required by other applicable Federal laws and regulations.

(c) After making its decision on the PAP, DOGM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over a publicly owned park or historic property included in the NRHP which would be affected by a design under section 522(e)(3) of SMCRA. A copy of the permit and written findings will be submitted to OSMRE if requested.

C. Review Procedures Where Leased Federal Coal is Involved: 1. DOGM will assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (3), (4), (6) and (7), to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), DOGM will assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations and activities in Utah where a mining plan is required. OSMRE will, at the request of the State, assist to the extent possible in this analysis and review.

The Secretary will concurrently carry out his responsibilities that cannot be delegated to DOGM under the Federal lands program, MLA, the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSMRE, and DOGM, with concurrence of any Federal agency involved, and without amendment to this Agreement.

2. DOGM will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State law and regulations. On matters concerned exclusively with regulations under 43 CFR Part 3480, Subparts 3480 through 3847, the Bureau of Land Management (BLM) will be the primary contact with the applicant. DOGM will send to OSMRE copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSMRE will send to DOGM copies of all OSMRE correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSMRE will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

BLM will inform DOGM of its actions and provide DOGM with a copy of documentation on all decisions. DOGM will be responsible for informing the applicant of all joint State-Federal determinations. Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSMRE will consult with and obtain the concurrences of the BLM, the Federal land management agency and other Federal agencies as required.

The Secretary reserves the right to act independently of DOGM to carry out his responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

DOGM will to the extent authorized, consult with the Federal land management agency and BLM pursuant to 30 CFR 740.4(c) (2) and (3), respectively. DOGM will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOGM will request all Federal agencies to furnish their findings or any requests for additional information to DOGM within 45 days of the date of receipt of the PAP. OSMRE will assist DOGM in obtaining this information, upon request of DOGM.

3. DOGM will be responsible for approval and release of performance bonds under 30 CFR 740.4(c)(4), and for review and approval of exploration operations not subject to 43 CFR Part 3480, under 30 CFR 740.4(c)(6).

DOGM will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSMRE will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7)(i)–(vii).

OSMRE will assist DOGM in carrying out DOGM's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between DOGM and other Federal agencies in a timely manner.

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies.

(c) Where OSMRE is assisting DOGM in reviewing the PAP, furnishing to DOGM the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSMRE and DOGM.

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program.

(e) Assuming all responsibility for ensuring compliance with any Federal lessee protection board requirement.

4. Review of the PAP: (a) OSMRE and DOGM will coordinate with each other during the review process as needed. DOGM will keep OSMRE informed of findings made during the review process which bear on the responsibilities of OSMRE or other Federal agencies. OSMRE will ensure that any information OSMRE receives which has a bearing on decisions regarding the PAP is promptly sent to DOGM.

(b) DOGM will review the PAP for compliance with the Program and State law and regulations.

(c) OSMRE will review the operation and reclamation plan portion of the permit application, and any other appropriate portions of the PAP, for compliance with the non-delegable responsibilities of SMCRA and for compliance with the requirements of other Federal laws and regulations.

(d) OSMRE and DOGM will develop a work plan and schedule for PAP review and

each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSMRE and DOGM throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSMRE will furnish DOGM with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, DOGM will provide OSMRE all available information that may aid OSMRE in preparing any findings.

(e) DOGM will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAPs agreed upon by DOGM and OSMRE.

(f) DOGM may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that DOGM advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. DOGM will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in the approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where the proposed operation will adversely affect a unit of the NPS, DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit to mitigate environmental impacts as set forth under Article X of this agreement.

(i) After making its decision on the PAP, DOGM will send a notice to the applicant, OSMRE, the Federal land management agency, and any agency with jurisdiction over the publicly owned park or historic property included in the NRHP affected by a decision under section 522(e)(3) of SMCRA. A copy of the written findings and the permit will also be submitted to OSMRE.

5. OSMRE will provide technical assistance to DOGM when requested, if available resources allow. OSMRE will have access to DOGM files concerning operations on Federal lands.

D. Review Procedures for Permit Revisions, Amendments, or Renewals: 1. Any permit revision, amendment, or renewal for an operation on Federal lands will be reviewed and approved or disapproved by DOGM after consultation with OSMRE on whether such revision, amendment, or renewal constitutes a mining plan modification. OSMRE will inform DOGM within 30 days of receiving a copy of a proposed revision, amendment, or renewal, whether the permit revision, amendment, or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSMRE and DOGM will follow the procedures outlined in paragraphs C.1. through C.5. of this Article.

2. OSMRE may establish criteria to determine which permit revisions, amendments, and renewals clearly do not constitute mining plan modifications.

3. Permit revisions, amendments, or renewals on Federal lands which are determined by OSMRE not to constitute mining plan modifications under paragraph D.1. of this Article or that meet the criteria for not being mining plan modifications as established under paragraph D.2. of this Article will be reviewed and approved following the procedures outlined in paragraphs B.1. through B.5. of this Article.

Article VII: Inspections

A. DOGM will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the Program.

B. DOGM will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSMRE a legible copy of the completed State inspection report.

C. DOGM will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843 and its obligations under laws other than SMCRA.

D. OSMRE will ordinarily give DOGM reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSMRE is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact DOGM no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger of significant, imminent environmental harm will be referred to DOGM for action. The Secretary reserves the right to conduct inspections without prior notice to DOGM to carry out his responsibilities under SMCRA.

Article VIII: Enforcement

A. DOGM will have primary enforcement authority under SMCRA concerning compliance with the requirements of this Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSMRE and DOGM, DOGM will have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. DOGM will inform OSMRE prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSMRE or any joint inspection where DOGM and OSMRE fail to agree regarding the propriety of any particular enforcement action, OSMRE may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845. Such enforcement action will be based on the standards in the Program, SMCRA, or both, and will be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845.

D. DOGM and OSMRE will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of DOGM and OSMRE will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

Article IX: Bonds

A. DOGM and the Secretary will require each operator who conducts operations on Federal lands to submit a single performance bond payable to Utah and the United States to cover the operator's responsibilities under SMCRA and the Program. Such performance bond will be conditioned upon compliance with all requirements of the SMCRA, the Program, State rules and regulations, and any other requirements imposed by the Department. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. DOGM will advise OSMRE or annual adjustments to the performance bond, pursuant to the Program.

B. Prior to releasing the operator from any obligation under such bond, DOGM will obtain the concurrence of OSMRE. OSMRE concurrence will include coordination with other Federal agencies having authority over the lands involved.

C. Performance bonds will be subject to forfeiture with the concurrence of OSMRE, in accordance with the procedures and requirements of the Program.

D. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of SMCRA.

Article X: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights and Compatibility Determinations

A. Unsuitability Petitions.

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition is reserved to the Secretary.

2. When either DOGM or OSMRE receives a petition that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSMRE will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA, or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA are received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, OSMRE will determine whether VER exists for such areas.

For non-Federal lands within section 522(e)(1) areas DOGM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect Federal lands. For such non-Federal lands affecting Federal lands, OSMRE will make the VER determination.

Under section 522(e)(1), for non-Federal lands within the boundaries of the National Park System, DOGM, with the consultation and concurrence of OSMRE, will determine whether operations on such lands will or will not affect the Federal interest. For such non-Federal lands within the boundaries of the National Park System which affect the Federal interest, OSMRE will make the VER determination.

1. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), OSMRE will make the VER determination.

OSMRE will process requests for determinations of compatibility under section 522(e)(2) of SMCRA.

3. For Federal lands, DOGM, with the consultation and concurrence of OSMRE, will determine whether any proposed operation will adversely affect units of the National Park System with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA. For such operations adversely affecting units of the National Park System, DOGM, with the consultation and concurrence of OSMRE, will make the VER determination.

For Federal lands, DOGM will determine whether any proposed operation will adversely affect all publicly owned parks other than those covered in the preceding paragraph and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Places, with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA.

For Federal lands other than those on which the proposed operation will adversely affect units of the National Park System, DOGM will make the VER determination for operations which are prohibited or limited by section 522(e)(3) of SMCRA. In the case that VER is determined to exist on Federal lands under section 522(e)(3) of SMCRA where a proposed operation will adversely affect a unit of the NPS, DOGM will work with the NPS to develop mutually agreed upon terms and conditions for incorporation into the permit in order to mitigate environmental impacts.

In the case that VER is determined not to exist under section 522(e)(3) of SMCRA or 30 CFR 761.11(c), no surface coal mining operations and activities will be permitted unless jointly approved by DOGM and the Federal, State or local agency with jurisdiction over the publicly owned park or historic place.

4. DOGM will process determinations of VER on Federal lands for all areas limited or prohibited by section 522(e) (4) and (5) of SMCRA as unsuitable for mining. For operations on Federal lands, DOGM will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR Part 732 for changes to the Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. DOGM and the Department will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the State or the Secretary may have under laws other than SMCRA or their regulations, including but not limited to those listed in Appendix A.

Dated:_____

Signed:_____

Governor of Utah

Dated:_____

Signed:_____

Secretary of the Interior

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR Part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR Part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR Part 402.

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR Part 800.

6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

10. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

11. Executive Order 11988 (May 24, 1977), for flood plain protection.

12. Executive Order 11990 (May 24, 1977), for wetlands protection.

13. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

14. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

15. The Constitution of the United States.

16. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

17. 30 CFR Chapter VII.

18. The Constitution of the State of Utah.

19. Utah Code Annotated 40–10–1 *et seq.*

20. Utah Code Annotated 40–8–1 *et seq.*

21. Utah Coal Mining and Reclamation Permanent Program, Chapters I and II, Final Rules of the Board of Oil, Gas and Mining, UMC/SMC 700 *et seq.*

[FR Doc. 87–5407 Filed 3–12–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 545

South African Transactions Regulations

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This rule amends the South African Transactions Regulations, 31 CFR Part 545 ("the Regulations"), to add section 545.808, requiring that a certification be filed with the Customs Service upon making an entry into the United States of hides, skins, leather, or furskins from animals that are taken from the wild in South Africa. This rule relates to section 319 of the Comprehensive Anti-Apartheid Act of 1986, prohibiting the importation of any South African agricultural commodity or product, or any byproduct or derivative thereof, as well as any article suitable for human consumption (§ 545.205 of the Regulations).

EFFECTIVE DATE: 12:01 a.m., Eastern Daylight Time, October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury 1331 G Street NW., Washington, DC 20220 (tel.: 202/376-0408).

SUPPLEMENTARY INFORMATION: The Comprehensive Anti-Apartheid Act of 1986, Pub. L. 99-440, 100 Stat. 1086, as amended by H.J. Res. 756, Pub. L. 99-631, 100 Stat. 3515 ("the Act"), bans the importation from South Africa of any agricultural commodity or product, or any byproduct or derivative thereof, as well as any article suitable for human consumption. Section 319 is implemented in § 545.205 of the Regulations, 31 CFR Part 545 (51 FR 41907). On November 19, 1986, the Treasury Department published product guidelines used by the U.S. Customs Service in determining which products are subject to the bans imposed by section 319 of the Act (51 FR 41911). In a notice published in conjunction with this final rule, the Treasury Department is announcing an amendment to the product guidelines which exempts from the agricultural import ban the importation of hides, skins, leather, or furskins classifiable under Schedule 1, Part 5, "Hide, Skins, and Leather; Furskins" (including TSUS numbers 120.11 through 120.50, 121.10 through 121.65, 123.00 through 123.50, and 124.10 through 124.80), provided that such articles (a) are from animals that are taken from the wild in South Africa, and that are not cultivated, ranched, or otherwise the product of animal husbandry; (b) are accompanied by the certification required under this rule; and (c) may be imported consistent with the requirements of Title 50 of the Code of Federal Regulations (Wildlife and Fisheries), including those relating to endangered species. The certification required in this rule is in addition to the certification as to parastatal status required under 31 CFR 545.807.

Since these regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because these regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 545

Agricultural products, Imports, Namibia, Reporting and recordkeeping requirements, South Africa.

For the reasons set forth in the preamble, 31 CFR Part 545 is amended as follows:

PART 545—SOUTH AFRICAN TRANSACTIONS REGULATIONS

1. The "Authority" citation for Part 545 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12532, 50 FR 36861, Sept. 10, 1985; E.O. 12535, 50 FR 40325, Oct. 3, 1985; Pub. L. No. 99-440, 100 Stat. 1086; H.J. Res. 756, Pub. L. No. 99-631, 100 Stat. 3515; E.O. 12571, 51 FR 39505, Oct. 29, 1986.

2. New § 545.808 is added to read as follows:

§ 545.808 Certification concerning hides, skins, leather, and furskins of animals from the wild.

If the importer asserts that the imported articles are hides, skins, leather, or furskins, classifiable under Schedule 1, Part 5, "Hide, Skins, and Leather; Furskins" (including TSUS numbers 120.11 through 120.50, 121.10 through 121.65, 123.00 through 123.50, and 124.10 through 124.80), of animals that are taken from the wild in South Africa, and that are not cultivated, ranched, or otherwise the product of animal husbandry, the following signed certificate shall be filed with the U.S. Customs Service upon making an entry of such goods from South Africa:

These _____ [hides, skins, leather, or furskins], classifiable under TSUS number(s) _____ [from Schedule 1, Part 5, "Hide, Skins, and Leather; Furskins" (including TSUS numbers 120.11 through 120.50, 121.10 through 121.65, 123.00 through 123.50, and 124.10 through 124.80)], are from _____ [type of animal] that were taken from the wild in South Africa, and that were not cultivated, ranched, or otherwise the product of animal husbandry. The requirements of Title 50 of the Code of Federal Regulations (Wildlife and Fisheries), including those relating to endangered species, have been fully complied with in removing these articles from South Africa, and all applicable import certificates required pursuant to Title 50 are presented with this entry.

Dated: February 19, 1987.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 28, 1987.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 87-5453 Filed 3-10-87; 4:13 pm]

BILLING CODE 4810-25-M

31 CFR Part 545

South African Transactions Regulations; Amendment to Notice of Interpretation

AGENCY: Department of the Treasury.

ACTION: Amendment to notice of interpretation.

SUMMARY: Notice is hereby given that the Treasury Department is amending the product guidelines used by the U.S. Customs Service in determining which products are subject to the bans on the importation of any South African agricultural commodity or product, or any byproduct or derivative thereof, imposed by section 319 of the Comprehensive Anti-Apartheid of 1986. The amendment specifies that the importation of hides, skins, leather and furskins from animals that are taken from the wild in South Africa, and that are not cultivated, ranched, or otherwise the product of animal husbandry, is not subject to the import ban, provided that the products to be imported are accompanied by the certification required under 31 CFR 545.808, published in conjunction with this notice.

EFFECTIVE DATE: 12:01 a.m., Eastern Daylight Time, October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Harrison Feese, U.S. Customs Service, Office of Commercial Compliance, 1301 Constitution Avenue NW., Washington, DC 20229 (tel.: 202/566-8651).

SUPPLEMENTARY INFORMATION: Section 319 of the Comprehensive Anti-

Apartheid Act of 1986, Pub. L. 99-440, 100 Stat. 1086, as amended by H.J. Res. 756, Pub. L. 99-631, 100 Stat. 3515 ("the Act"), bans the importation from South Africa of any agricultural commodity or product, or any byproduct or derivative thereof, as well as articles suitable for human consumption. Section 319 is implemented in the South African Transactions Regulations, 31 CFR Part 545, at § 545.205 (51 FR 41907).

On November 19, 1986, the Treasury Department published product guidelines used by the U.S. Customs Service in determining which products are subject to the bans imposed by section 319 of the Act (51 FR 41911). The second paragraph of part I (*Agricultural Commodities and Articles Fit for Human Consumption*) of that notice is amended to read as follows, with new language italicized:

The foregoing does not include any TSUS number in Schedule 1 covering products of countries other than South Africa, nor does it include items classifiable under TSUS numbers 100.03; 100.04; 184.54; 184.55; 186.50; 190.30; 190.35; 190.45; 190.47; 190.50; 190.60; 190.65; 190.68 (mounted or stuffed animals and parts of animals, which are the products of taxidermy); 190.80; and 190.85 through 190.93. *In addition, the foregoing does not include hides, skins, leather, and furskins classifiable under Schedule 1, Part 5, "Hides, Skins, and Leather; Furskins" (including TSUS numbers 120.11 through 120.50, 121.10 through 121.65, 123.00 through 123.50, and 124.10 through 124.80), provided such articles (a) are from animals that are taken from the wild in South Africa (such as elephant, hippopotamus, cape buffalo, python, impala, springbok, blesbok or antelope), and that are not cultivated, ranched, or otherwise the product of animal husbandry; (b) are accompanied by the certification required under 31 CFR 545.808; and (c) may be imported consistent with the requirements of Title 50 of the Code of Federal Regulations (Wildlife and Fisheries), including those relating to endangered species. The category of agricultural commodities, products, byproducts, or derivatives thereof also does not include pets, provided they are imported for personal use and not for commercial purposes, nor does it include items classifiable under TSUS number 813.20 (game animals killed abroad and imported for noncommercial purposes).*

Dated: February 19, 1987.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: February 28, 1987.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 87-5454 Filed 3-10-87; 4:14 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD-85-092]

Puget Sound Vessel Traffic Service Provisions

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the Puget Sound Vessel Traffic Service (PSVTS). The reporting requirements have been updated to reflect the Vessel Traffic Center's (VTC's) increased radar coverage capabilities; wording has been clarified throughout the regulations; and the regulations have been reorganized and reworded to make them compatible with the proposed Cooperative Vessel Traffic Management System (CVTMS) regulations which will apply to waters adjacent to those covered by the PSVTS regulations. This rule revises the operational reporting scheme by reducing the number of reports required and providing for the communication of more timely information to the VTC. For Traffic Service participants who navigate in both the PSVTS area and the CVTMS area, this rule will facilitate the changeover in operating procedures when going from one area to another by minimizing the differences between the two sets of regulations. However, as a result of comments received after publication of the PSVTS Notice of Proposed Rulemaking (NPRM), some sections have been changed and additional minor differences from CVTMS regulations introduced.

EFFECTIVE DATE: April 13, 1987.

FOR FURTHER INFORMATION CONTACT: LTJG K.J. BRADLEY, Office of Navigation, Vessel Traffic Services Branch, (202) 267-0412. Normal office hours are 7:30 a.m. to 4:00 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: An NPRM for this regulation was published on Friday, September 12, 1986 in the **Federal Register** (51 FR 32489). The comment period closed on November 12, 1986. Six sets of comments were received. As a result of these comments changes were made to sections 161.112, 161.114, 161.128, and 161.137. The reasoning for making these changes is found below in the "Discussion of Comments and Resultant Changes to NPRM" section of this preamble. No other substantive changes were made.

Drafting Information

The principal persons involved in drafting this proposal are LTJG K.J. BRADLEY, Project Manager; and CDR R.C. ZABEL, Project Counsel, Office of the Chief Counsel.

Background

The Ports and Waterways Safety Act (33 U.S.C. 1221) provides authority for the Secretary of the Department of Transportation to "establish, operate, and maintain vessel traffic services and systems for ports, harbors, and other waters subject to congested vessel traffic." On July 10, 1974, the Coast Guard established regulations for the Puget Sound Vessel Traffic Service (PSVTS) (39 FR 25430; July 10, 1974). These regulations provide for the safe and expeditious movement of vessel traffic while minimizing the risk of pollution.

Discussion of Final Rule

Changes in PSVTS equipment capabilities and operating procedures necessitated the revision of Title 33 CFR 161.101 through 161.187. This rule provides more definitive requirements in some areas, streamlines others, and in general, rewords the PSVTS regulations to more accurately reflect intended procedures and current equipment capabilities.

This rule has also reorganized and reworded the regulations to make them compatible with the proposed Cooperative Vessel Traffic Management System (CVTMS) regulations. The CVTMS regulations will provide for a joint U.S. and Canadian system for managing vessel traffic in waters bounding the state of Washington and Vancouver Island. The waters subject to this agreement include the Strait of Juan de Fuca and its Pacific Ocean approaches, Haro Strait, and the Strait of Georgia—waters which also bound the PSVTS Area. The PSVTS VTC in Seattle manages vessel traffic in both the PSVTS Area and in the Strait of Juan de Fuca in the CVTMS Area. The same radio call sign, "Seattle Traffic," is used to contact the PSVTS VTC whether a vessel is operating in the PSVTS Area, or the CVTMS Area. Canadian VTCs manage vessel traffic in the remainder of the CVTMS Area. The user who will be required to participate in both systems will find it easier to understand and comply with both sets of regulations if the PSVTS regulations are worded and structured to be as consistent as possible with the CVTMS regulations. Actual changes from the previous regulations are discussed briefly below.

There are several cites in this rule which refer to the CVTMS regulations. The CVTMS regulations were published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on 18 August 1983 (48 FR 37433), and the Final Rule was drafted without significant changes from the NPRM. Mariners are urged to comply with CVTMS procedures on a voluntary basis pending publication of the final rule in 33 CFR 161.200–266. Since CVTMS is a joint agreement, the U.S. and Canada intend to publish Final Rules at the same time. The delay in publication of the U.S. Final Rule is due to Canadian delays in getting their CVTMS regulations approved for publication. It is anticipated the U.S. and Canadian CVTMS Final Rules will be published simultaneously in 1987.

This rule has deleted specific reporting requirements concerning navigation in and around the Traffic Separation Scheme (TSS), deleted the Initial report if the vessel is entering the PSVTS Area from the CVTMS Area and has previously reported the information to another VTC, and deleted the requirement to routinely call-in at reporting points. A report when a vessel actually begins navigating in the VTS area has been added by this rule. The net effect of these changes is an actual decrease in the amount of reporting required.

This rule has added and changed definitions in § 161.103 ("Commercial Vessel", "Floating Plant", "Vessel", "CVTMS", "CVTMS Area", "Precautionary Area", "Separation Zone", "Traffic Lane", and "Traffic Separation Scheme") to clarify the meaning of these terms in the regulations; and one definition ("Displacement Ton") was deleted because the term was not used.

The description and discussion of the Port Angeles precautionary area has been modified slightly. The description of precautionary area "RB" also has a minor change, and mariners are now exempted from the requirement to keep the center of precautionary area "RB" to port.

Section 161.188 of the previous regulations was deleted to avoid duplication with the provision in § 165.1301 of this Chapter authorizing PSVTS to establish Temporary Special Traffic Lanes.

Vessels listed in § 161.101(c) (vessels of 300 or more gross tons, vessels of 100 or more gross tons carrying passengers for hire, dredges, etc.) are now required to carry the PSVTS regulations onboard while in the VTS area. In addition, vessels will now have to report their name and location at the moment when entering or getting underway in the VTS area.

Discussion of Comments and Resultant Changes to NPRM

The discussion of comments is broken down below by section.

Section 161.105. One commenter questioned whether the Coast Guard will relieve the master, pilot, or person in charge, of responsibility for resulting actions if directions issued by the VTC are complied with, as required by subparagraph (c). While the VTC has the authority to direct a vessel in an emergency to slow, stop, anchor, or otherwise proceed to avoid a dangerous situation; the master, pilot, or person in charge will at all times remain responsible for the safe and prudent maneuvering of the vessel. As stated in § 161.110, the master, pilot, or person in charge may choose to disregard an order to the extent necessary to avoid endangering persons, property, or the environment, and must report all such actions promptly to the VTC. Failure to follow a VTC direction would be a matter for resolution on a case-by-case basis in a court of law or at an administrative hearing.

Section 161.106. One commenter suggested changing "the efficient operation of the VTS system" to "efficient operation within the VTS area." The proposed change could be construed as implying the User's Manual will increase the efficiency of a vessel while it is in the VTS area, which is not the intent. The original wording was retained because the Coast Guard is discussing the various aspects of the "system" which are being used to provide "Vessel Traffic Service" to the mariner.

Section 161.112. Three comments were received objecting to the requirement to maintain a radio listening watch while a vessel is anchored or moored to a buoy. However, two of these comments suggested such a listening watch could be maintained when Gale Warnings were in effect. The other comment stated vessels could be contacted while at anchor or moored without relying on a VTC frequency listening watch. The Coast Guard's primary concern in regards to this section is for the safety of a vessel, and surrounding vessels, structures, or shore. During most emergency situations there simply would not be enough time to pursue routine vessel notification procedures as mentioned in the last comment. It is therefore imperative that the VTC be able to contact a vessel immediately in an emergency so prompt corrective actions may be taken if necessary. It is probably safe to assume most such exigent situations would be due primarily to deteriorating weather conditions. The need for making immediate radio contact with a vessel under fair weather conditions is considered quite remote. Therefore, in keeping with the spirit of the regulations to enhance safety, and at the same time eliminating a burden on mariners, this section was reworded to require a listening watch while a vessel is anchored or moored to a buoy only while gale warnings (forecast for winds ranging from 34–48 knots), or greater, are in effect in the VTS area. Mariners are advised however, this change will result in a slight difference from the CVTMS regulations which will require such a listening watch at all times when a vessel is anchored or moored to a buoy.

Section 161.112. One commenter questioned whether the contents of 47 CFR Part 224(b) (sic—commenter probably meant 47 CFR 80.305) should be summarized in this section, exempting vessels guarding both the bridge-to-bridge and VTS frequency from guarding channel 16 (156.800 MHz). In general, references to other regulations are avoided as much as possible due to the inherent problems associated with updating a set of regulations every time the referenced regulations are changed. Such information would be more appropriate in the VTS User's Manual, and will be considered for inclusion at the next revision.

Section 161.113. One commenter suggested the words "that is maintained in effective operating condition" be omitted. The commenter stated the Bridge to Bridge Act of 1972 and FCC rules in 47 CFR Part 80 are sufficient requirements to ensure radiotelephone equipment is maintained in effective operating condition. The Coast Guard's intent is not to establish an additional set of controls over vessel equipment with this section. Rather, the section serves to emphasize a point which is critical to the optimum operation of a VTS, that is effective communications. The section was therefore not changed.

Section 161.114. One commenter recommended deleting the words "and with other vessels when passing navigation-related information, except as provided in § 161.170 for vessels operating in Rosario Strait." The commenter felt this provision would encourage vessels to make passing arrangements on the VTS primary frequency, rather than other appropriate frequencies, thus leading to excessive communications and congestion on the

VTS primary frequency. Since the VTS operations would be degraded if communications are impaired, the proposed change was made. Note however, this change results in a slight difference from the similar "Use of designated frequency" section in the CVTMS regulations.

Section 161.120. One commenter proposed the section should be revised to require the master to restore radiotelephone equipment to operating condition as soon as practical, and to give due consideration to the loss of the capability and navigate with extraordinary caution. Again, the importance of proper communications is stressed. The wording "as soon as possible" in the regulations conveys a more urgent need to restore communications capabilities than the "as soon as practical" wording proposed. In addition, current FCC rules in 47 CFR 80.1023 also require restoring the equipment to effective operating condition as soon as possible. Adding a statement to require the master to give due consideration to the loss of radiotelephone capability and navigate with caution is considered unnecessary. It is assumed professional, competent mariners will take such action as a matter of course. For these reasons, the section was not changed.

Section 161.128. Five commenters recommended changing the timing of the initial report from "at least 15 minutes" to "at least 5 minutes" before a vessel begins navigating. Various comments stated: 5 minutes should be adequate; 5 minutes for initial report notification would make that requirement the same as the 5 minutes notice required for local harbor reports and ferry vessel reports; and current practice is closer to 5 minutes than 15 minutes. A minimum of 15 minutes was chosen to make the initial report required by these regulations nearly identical to the CVTMS regulations initial report. However, the significant response urging a lower time limit is compelling, therefore the section has been changed to require a minimum 5 minutes notice. Again, the mariner is advised CVTMS regulations will differ, requiring at least 15 minutes notice for the initial report.

Section 161.131. One commenter suggested several items required in the initial report (anticipated speed, ETA, route) should be made at the time of the underway report instead. The commenter stated this change would eliminate the need to update all the information required in the initial report if the vessel is delayed in getting underway. The intent behind requiring an underway report was to aid VTC watch personnel in establishing a clear, up-to-the-minute picture of vessel traffic, while at the same time not creating an undue burden on the master, pilot, or person in charge of a vessel. Requiring lengthy reports when a vessel is maneuvering to get underway can distract and create a hazardous situation. This section was therefore not changed.

Section 161.132. Though not addressed in the comments, a grammatical error was corrected in this section by eliminating the word "their".

Section 161.137. One commenter proposed deleting "Time and" from subparagraph (b) because a ferry is required to call within 5 to 10 minutes of getting underway and the VTC will have a schedule for reference if a more precise time is needed. Since the level of safety should not be affected, § 161.137(b) has been changed to require only point of departure information.

Section 161.143. One commenter recommended adding the words "carrying product" to this section to allow tank vessels not carrying product to travel to or from Seattle shipyards without requesting a formal authorization from the Commander, Thirteenth Coast Guard District to deviate from the regulations. The controversy which preceded publication of this section in April 1982 is a strong incentive for the Coast Guard not to tamper with this section. The section has been left unchanged so the public can be assured the Coast Guard won't allow large tankers in the waters of Puget Sound unless the District Commander is absolutely sure all necessary precautions are taken and all proper procedures are followed.

The Coast Guard also received two comments endorsing sections in the proposed rule. One commenter approved of the new § 161.134 and the elimination of the wording requiring reports of one knot speed changes. More specific guidance on when to provide updated information to the VTC is more appropriately included in the VTS User's Manual, and will be considered for inclusion at the next revision. Another commenter approved of § 161.152 exempting precautionary area "RB" from directional flow and eliminating the need to request deviation permission.

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291 and "non-significant" under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule was found to be so minimal that further evaluation was unnecessary. These changes to the previous regulations do not impose any economic burden on participants. Since the impact of this rule is expected to be minimal, the Coast Guard certifies, as required by the Regulatory Flexibility Act, it will not have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping Requirements

This rulemaking contains an information collection requirement. This item has been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been approved by OMB. The section number and corresponding OMB approval number is as follows: Section 161.108 (§ 161.109 in previous regulations), OMB approval number 2115–0540.

List of Subjects in 33 CFR Part 161

Navigation (water), Vessels, Traffic separation scheme.

For the reasons set forth in the preamble, 33 CFR Part 161 is amended as follows:

PART 161—[AMENDED]

1. The authority citation for Part 161 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§§ 161.188 and 161.189 [Removed]

2. Subpart B is amended by revising the sections under the undesignated center heading Puget Sound Vessel Traffic Service through the center heading Descriptions and Geographic Coordinates, consisting of §§ 161.101 through 161.187 to read as set forth below. Sections 161.188 and 161.189 are removed.

PART 161—VESSEL TRAFFIC MANAGEMENT

* * * * *

Subpart B—Vessel Traffic Services

* * * * *

Puget Sound Vessel Traffic Service

General Rules

Sec.

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Subpart B—Vessel Traffic Services

Puget Sound Vessel Traffic Service

General Rules

§ 161.101 Purpose and applicability.

(a) Sections 161.101 through 161.187 prescribe rules for vessel operation in the Puget Sound Vessel Traffic Service Area (VTS Area) to prevent collisions and groundings and to protect the navigable waters of the VTS Area from environmental harm resulting from collisions and groundings.

(b) The General Rules in §§ 161.101 through 161.105 and 161.107 through 161.110, the Use of Designated Frequency Rule in § 161.114, and the TSS Rules in §§ 161.150 through 161.156 apply to the operation of all vessels.

(c) The Requirement to Carry Regulations Rule in § 161.106, the Communications Rules in §§ 161.112 through 161.126, the Vessel Movement Reporting Rules in §§ 161.127 through 161.137, the Vessel Speed and Wake Control Rule in § 161.157, and the Rosario Strait Rules in §§ 161.170 through 161.174 apply only to the operation of:

(1) Each vessel of 300 or more gross tons that is propelled by machinery;

(2) Each vessel of 100 or more gross tons that is carrying one or more passengers for hire;

(3) Each commercial vessel of 26 feet or over in length engaged in towing another vessel astern, alongside, or by pushing ahead;

(4) Each dredge and floating plant; and

(5) Each small passenger carrying vessel certificated in accordance with 46 CFR Part 175 through 187 (Subchapter T) when carrying more than six passengers for hire.

§ 161.103 Definitions.

As used in §§ 161.101 through 161.187:

"Commercial Vessel" means any vessel operating in return for payment or other type of compensation.

"Cooperative Vessel Traffic Management System (CVTMS)" means the system of vessel traffic management established and jointly operated by Canada and the United States within the waters of the CVTMS Area.

"Cooperative Vessel Traffic Management System Area (CVTMS Area)". For the purpose of these rules, the CVTMS Area consists of the waters from a point in the Pacific Ocean at 48°23'30" N., 124°48'37" W.; thence due east to the Washington State coast at Cape Flattery; thence southeastward along the Washington coastline to New Dungeness Light; thence northerly to Puget Sound Traffic Lane Entrance Lighted Buoy "S"; thence to Rosario Strait Traffic Lane Entrance Lighted Horn Buoy "R"; thence to Hein Bank Lighted Bell Buoy; thence to Cattle Point Light on San Juan Island; thence along the shoreline to Lime Kiln Light; thence to Kellett Bluff Light on Henry Island; thence to Turn Point Light on Stuart Island; thence to Skipjack Island Light; thence to Sucia Island Daybeacon 1; thence along the shoreline of Sucia Island to a point at 48°46'06" N., 122°53'30" W.; thence to Clements Reef Buoy "2"; thence to Alden Bank Lighted Gong Buoy "A"; thence to Birch Point at 48°56'33" N., 122°49'18" W.; thence along the shoreline to a point where the shoreline intersects the 49° north parallel of latitude; thence due west to the Canadian shoreline at Maple Beach; thence along the shoreline around Point Roberts to a point where the shoreline intersects the 49° north parallel of latitude at Boundary Bluff; thence due west to a point at 49°00'00" N., 123°19'14" W.; thence southerly to Active Pass Light; thence to East Point on Saturna Island; thence to Point Fairfax Light on Moresby Island; thence to Discovery Island Light; thence to Trail Island Light; thence to Brotchie Ledge Light; thence to Albert Head Light; thence westward along the Canadian shoreline to the intersection of the shoreline with 48°35'45" N., near Bonilla Point; thence due west to a point at 48°35'45" N., 124.47'30" W.; thence southerly along a rhumb line to the starting point at 48°23'30" N., 124°48'37" W.

"ETA" means estimated time of arrival.

"Floating Plant" means any vessel, other than a vessel underway and making way, engaged in any construction, manufacturing, or exploration operation, and which may restrict the navigation of other vessels.

"Person" means an individual, firm, corporation, association, partnership, and governmental entity.

"Precautionary Area" means a routing measure comprising an area within defined limits where ships must navigate with particular caution, and within which the direction of traffic flow may be recommended.

"Separation Zone" means an area of the TSS separating the opposing traffic lanes.

"Traffic Lane" means an area of the TSS within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

"Traffic Separation Scheme (TSS)" means the routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

"Vessel" means every description of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water.

"Vessel Traffic Center (VTC)" means the shore-based facility that operates the Puget Sound Vessel Traffic Service.

"Vessel Traffic Service Area (VTS Area)" means the area described in § 161.180.

§ 161.104 Vessel operation in the VTS Area.

No person, except those authorized to do so under § 161.108 and § 161.110, may cause or authorize the operation of a vessel in the VTS Area contrary to the rules contained in §§ 161.101 through 161.187.

§ 161.105 VTC directions.

(a) During conditions of vessel congestion, adverse weather, reduced visibility, or other hazardous circumstances in the VTS Area, the VTC may issue directions to control and

supervise traffic, and may specify times when vessels may enter, move within or through, or depart from ports, harbors, or other waters in the VTS Area.

(b) When a vessel is navigating in a unsafe manner or with improperly functioning equipment, the VTC may direct the vessel's movement, including directing it to anchor or moor.

(c) The master, pilot, or person directing the movement of a vessel in the VTS Area shall comply with each direction issued to him under this section.

§ 161.106 Requirement to carry regulations.

(a) The master of a vessel listed in § 161.101(c) shall ensure that a copy of the current Puget Sound Vessel Traffic Service regulations, Title 33, Code of Federal Regulations, Sections 161.101 through 161.187 (33 CFR 161.101 through 161.187), is available on board the vessel when it is in the VTS Area.

(b) The Puget Sound Vessel Traffic Service User's Manual includes the VTS regulations and guidelines for the efficient operation of the VTS system. The manual may be obtained free-of-charge from: Commanding Officer, Puget Sound Vessel Traffic Service, 1519 Alaskan Way S., Seattle, WA 98134.

§ 161.107 Laws and regulations not affected.

Nothing in §§ 161.101 through 161.187 is intended to relieve any person from complying with any other applicable laws or regulations.

§ 161.108 Authorization to deviate from these rules.

(a) Where these regulations require a particular procedure, the Commander, Thirteenth Coast Guard District, may, upon written request, authorize any other procedure for use in U.S. waters if it is determined that such other procedure provides a level of safety equivalent to that provided by the required procedure. An application for an authorization must state the need and fully describe the proposed procedure.

(b) The VTC, may, upon request, issue an authorization to deviate from any rule in §§ 161.101 through 161.187 for a voyage or part of a voyage on which a vessel is embarked or about to embark.

(Approved by the Office of Management and Budget under control number 2115-0540)

§ 161.110 Emergencies.

In an emergency, the master, pilot, or person directing the movement of a vessel, may deviate from any rule in §§ 161.101 through 161.187 to the extent necessary to avoid endangering persons, property, or the environment, and shall report the deviation to the VTC as soon as possible.

Communications Rules

§ 161.112 Radio listening watch.

(a) When underway, or anchored or moored to a buoy when Gale Warnings (forecast for winds ranging from 34-48 knots) or greater are in effect, in the VTS Area, the master, pilot, or person directing the movement of a vessel shall ensure that a radiotelephone listening watch is maintained on the appropriate frequency designated in § 161.114, except when transmitting on that frequency.

(b) The radio listening watch required by paragraph (a) of this section may be maintained in a location other than the vessel's navigational bridge when the vessel is anchored or moored to a buoy.

§ 161.113 Radiotelephone equipment.

The master, pilot, or person directing the movement of a vessel shall ensure all reports and communications required by §§ 161.101 through 161.187 are made from the navigational bridge of the vessel, or, in the case of a dredge, at its main control station, except when anchored or moored to a buoy as provided in § 161.112(b). Such reports and communications must be made to the VTC on its designated frequency using a radiotelephone that is maintained in effective operating condition.

§ 161.114 Use of the designated frequency.

(a) In accordance with Federal Communication Commission regulations, no person may use the frequency or frequencies designated in this section to transmit any information other than information necessary for the safety of vessel traffic.

(b) All transmissions on the VTS frequencies shall be initiated on low power, if available; high power may only be used if low power communications are unsuccessful.

(c) The following frequencies must be used when communicating with the VTC:

(1) Primary frequency: 156.700 MHz (channel 14).

(2) Secondary frequency (to be used if communication not possible on primary frequency): 156.650 MHz (channel 13).

§ 161.116 Time.

Each report required by §§ 161.101 through 161.187 must specify time using:

(a) The zone time in effect in the VTS Area; and

(b) The 24-hour clock system.

§ 161.118 English language.

Each report required by §§ 161.101 through 161.187 must be made in the English language.

§ 161.120 Radiotelephone equipment failure.

(a) If the radiotelephone required by § 161.112 ceases to operate, the master shall ensure that it is restored to operating condition as soon as possible. The failure of a vessel's radiotelephone equipment, while the vessel is underway, shall not in itself constitute a violation of these rules, nor shall it obligate the vessel to moor or anchor; however, required reports shall be made by other means, if possible.

(b) A vessel that cannot meet the radiotelephone requirements of these rules may not enter or get underway in the VTS Area without permission from the VTC.

(c) Paragraph (a) of this section does not relieve compliance with the radio equipment requirement in § 161.174(a)(2) for vessels operating in Rosario Strait.

§ 161.122 Report of radio failure.

Whenever the master, pilot, or person directing the movement of a vessel deviates from any rule in §§ 161.101 through 161.187 because of a radio failure, the deviation and radio failure shall be reported to the VTC as soon as possible.

§ 161.124 Report of impairment to the operation of the vessel.

The master, pilot, or person directing the movement of a vessel in the VTS Area shall report to the VTC as soon as possible:

(a) Any condition on the vessel that may impair its navigation such as fire or defective propulsion machinery, defective steering equipment, defective radar, defective gyrocompass, defective echo depth sounding device, defective communications equipment, or defective navigational lighting.

(b) Any tow that the towing vessel is unable to control, or can control only with difficulty.

(c) When involved in a grounding, collision, or ramming of a fixed or floating object.

Vessel Movement Reporting Rules

§ 161.127 Local harbor report.

(a) When a vessel moves within a three mile radius of its point of departure in the VTS Area, the movement is a local harbor movement. A vessel making a local harbor movement is exempted from the reporting requirements for Initial report

(§ 161.128), Underway report (§ 161.131), and Final report (§ 161.136).

(b) At least 5 minutes, but not more than 45 minutes, before a vessel makes a local harbor movement, as described under paragraph (a) of this section, the master, pilot, or person directing the movement of a vessel shall report, or cause to be reported, the following information to the VTC:

(1) Name and type of vessel.

(2) Position of departure.

(3) Time of departure.

(4) Destination and ETA.

(5) General description of operation to be performed.

(c) The master, pilot, or person directing the movement of a vessel shall report, or cause to be reported, any changes from the information reported under paragraph (b) of this section, except that departing or ETA times must be reported only if they vary by 15 minutes or more from the report.

§ 161.128 Initial report.

(a) Except as provided in paragraphs (b) and (c) of this section, at least 5 minutes, but not more than 45 minutes, before a vessel enters or begins to navigate in the VTS Area the master, pilot, or person directing the movement of the vessel shall report the following information to the VTC:

(1) Name and type of vessel.

(2) Point of entry in the VTS Area.

(3) Estimated time of entering or beginning to navigate in the VTS Area.

(4) Destination, ETA at destination, and route in the VTS Area.

(5) Anticipated vessel speed in knots.

(6) Whether or not the vessel intends to use the TSS.

(7) Whether or not any dangerous cargo listed in Part 160, Subpart C of this chapter is on board the vessel or its tow.

(8) Any impairment to the operation of the vessel as described in § 161.124.

(9) Any planned maneuvers that may impede traffic.

(b) Vessels making movements that require Local harbor reports (§ 161.127) are exempt from making this report.

(c) Vessels that will be entering from the CVTMS Area and have previously reported the above information to another VTC are exempt from making this report.

§ 161.131 Underway report.

As soon as a vessel enters or begins to navigate in the VTS Area, the master, pilot, or person directing the movements of the vessel shall report the following to the VTC:

(a) Vessel name.

(b) Vessel location.

§ 161.132 Calling-in-point report.

When directed to do so by the VTC, the master, pilot, or person directing the movement of a vessel shall report, on either a one-time basis, or as a series of reports:

(a) Vessel name.

(b) Vessel location.

§ 161.134 Follow-up report.

The master, pilot, or person directing the movement of a vessel shall report to the VTC, as soon as possible, any information which has changed since the previous report, including, but not limited to, ETA, speed, destination, and route.

§ 161.136 Final report.

No later than 30 minutes after a vessel anchors, moors in, or departs from the VTS Area, the master, pilot, or person directing the movement of a vessel shall report the place and time of anchoring, mooring, or departing to the VTC.

§ 161.137 Ferry vessels.

A ferry vessel operating in the VTS Area on a schedule and route, both of which have been previously furnished to the VTC, need not comply with Initial report (§ 161.128), Underway report (§ 161.131), Follow-up report (§ 161.134), and Final report (§ 161.136); however, the master, pilot, or person directing the movement of a ferry must report the following information to the VTC at least 5 minutes, but not more than 10 minutes prior to each departure from a ferry terminal:

(a) The name of the ferry vessel.

(b) Point of departure of the ferry vessel.

(c) Destination of the ferry vessel.

§ 161.143 Tank vessel navigation restrictions.

Tank vessels larger than 125,000 deadweight tons bound for a port or place in the United States may not operate in waters of the United States east of the line extending from Discovery Island Light to New Dungeness Light and all points in the Puget Sound area north and south of these lights.

Traffic Separation Scheme Rules

§ 161.150 Vessel operation in the TSS.

The master, pilot, or person directing the movement of a vessel in the TSS shall operate the vessel in accordance with the TSS rules prescribed in §§ 161.152 through 161.156.

§ 161.152 Direction of traffic.

(a) A vessel proceeding in the TSS must keep the separation zone to port.

(b) A vessel in a precautionary area, except the "RB" precautionary area or any temporary precautionary area, must keep the center of the precautionary area to port.

§ 161.154 Anchoring in the TSS.

No vessel may anchor in the TSS.

§ 161.156 Joining, leaving, and crossing a traffic lane.

(a) A vessel crossing a traffic lane must, to the extent possible, maintain a course that is perpendicular to the direction of the flow of traffic in the traffic lane.

(b) A vessel joining or leaving a traffic lane must steer a course to converge on or diverge from the direction of traffic flow in the traffic lane at as small an angle as possible.

§ 161.157 Vessel speed and wake control.

When the tide exceeds a stage of 11.0 feet at Seattle, all vessels listed in § 161.101(c), operating in the waters of the VTS Area, must proceed at a speed that will minimize the risk of wake damage while maintaining the ability to maneuver safely.

Rosario Strait Rules

§ 161.170 Communication in Rosario Strait.

Before a vessel meets, overtakes, or crosses ahead of any vessel listed in § 161.101(c), in Rosario Strait, the master, pilot, or person directing the movement of a vessel shall transmit the intentions of his vessel to the master of the other vessel on the frequency designated under the Bridge-to-Bridge Radiotelephone Act for the purpose of arranging safe passage.

§ 161.172 Report before entering Rosario Strait.

At least 15 minutes before a vessel enters the TSS at Rosario Strait, the master, pilot, or person directing the movement of the vessel shall report the vessel's ETA at, and point of entry in, Rosario Strait to the VTC by radiotelephone.

§ 161.174 Entering Rosario Strait.

(a) A vessel may not enter or get underway in Rosario Strait unless:

(1) The report required by § 161.172 has been made;

(2) The radio equipment on the vessel that is used to transmit the reports required by §§ 161.101 through 161.187 is operable;

(3) During periods of visibility of 2 miles or less, the radar on a vessel equipped with radar is in operation and manned; and

(4) The vessel is free of any conditions that may impair its navigation such as fire or defective propulsion machinery,

defective steering equipment, defective radar, defective gyrocompass, defective echo depth sounding device, defective communications equipment, or defective navigational lighting.

(b) A vessel of 75,000 deadweight tons or above may not enter or get underway in Rosario Strait unless permission to enter is obtained from the VTC.

Descriptions and Geographic Coordinates

§ 161.180 VTS Area.

The VTS Area consists of the navigable waters of the United States which are inside of a line drawn from New Dungeness Light northerly to Puget Sound Traffic Lane Entrance Lighted Buoy "S"; thence to Rosario Strait Traffic Lane Entrance Lighted Buoy "R"; thence to Hein Bank Lighted Bell Buoy; thence to Cattle Point Light on San Juan Island; thence along the shoreline to Lime Kiln Light; thence to Kellett Bluff Light on Henry Island; thence to Turn Point Light on Stuart Island; thence to Skipjack Island Light; thence to Sucia Island Daybeacon 1; thence along the shoreline of Sucia Island to a point at 48°46.1' N., 122°53.3' W.; thence to Clements Reef Buoy "2"; thence to Alden Bank Lighted Gong Buoy "A"; thence northerly to the westernmost tip of Birch Point at 48°56.6' N., 122°49.2' W.

§ 161.183 Separation zones.

(a) Each separation zone is 500 yards wide and centered on a line that extends from one point to another, or through several points, described in paragraph (c) of this section.

(b) Two boundaries of each separation zone are parallel to its centerline and extend to and intersect with the boundary of a precautionary area. No part of any separation zone is contained in a precautionary area.

(c) The latitudes and longitudes describing the centerline of the separation zone are:

(1) Between the Port Angeles precautionary area and "SA",
(i) 48°12'22" N., 123°06'30" W.
(ii) 48°11'37" N., 122°52'40" W.

(2) Between the Port Angeles precautionary area and "RA",
(i) 48°16'26" N., 123°06'30" W.
(ii) 48°19'06" N., 123°00'09" W.

(3) Between precautionary area "RA" and "SA",
(i) 48°18'45" N., 122°57'30" W.
(ii) 48°13'04" N., 122°51'24" W.

(4) Between precautionary area "RA" and "RB",
(i) 48°20'26" N., 122°57'01" W.
(ii) 48°24'14" N., 122°48'00" W.
(iii) 48°25'28" N., 122°46'23" W.

(5) Between precautionary area "RB" and "SA",
(i) 48°25'12" N., 122°44'40" W.
(ii) 48°24'10" N., 122°44'12" W.
(iii) 48°13'22" N., 122°48'55" W.

(6) Between precautionary area "SA" and "SC",
(i) 48°10'48" N., 122°46'58" W.
(ii) 48°06'48" N., 122°39'36" W.
(iii) 48°02'28" N., 122°38'20" W.

(7) Between precautionary area "SC" and "SE",
(i) 48°01'20" N., 122°37'37" W.
(ii) 47°57'53" N., 122°34'42" W.
(iii) 47°55'46" N., 122°30'14" W.

(8) Between precautionary area "SE" and "SF",
(i) 47°54'49" N., 122°29'17" W.
(ii) 47°46'31" N., 122°26'23" W.

(9) Between precautionary area "SF" and "SG",
(i) 47°45'19" N., 122°26'21" W.
(ii) 47°40'19" N., 122°27'38" W.

(10) Between precautionary area "SG" and "T",
(i) 47°39'05" N., 122°27'42" W.
(ii) 47°35'12" N., 122°27'06" W.

(11) Between precautionary area "T" and "TC",
(i) 47°33'59" N., 122°26'47" W.
(ii) 47°26'53" N., 122°24'12" W.
(iii) 47°23'07" N., 122°21'08" W.
(iv) 47°19'54" N., 122°26'37" W.

(12) Between precautionary area "CA" and "C",
(i) 48°44'15" N., 122°45'39" W.
(ii) 48°41'39" N., 122°43'34" W.

§ 161.185 Traffic lanes.

(a) Except as provided in paragraph (c) of this section, each traffic lane consists of the area within two parallel boundaries that are 1000 yards apart and that extend to, and intersect with, the boundary of a precautionary area. One of these parallel boundaries is parallel to and 250 yards from the centerline of a separation zone.

(b) No part of any traffic lane is contained in a precautionary area.

(c) The traffic lane in Rosario Strait consists of the area enclosed by a line beginning at 48°26'50" N., 122°43'27" W.; thence northerly to 48°36'06" N., 122°44'56" W.; thence northeasterly to 48°39'18" N., 122°42'42" W.; thence westerly and northwesterly along the boundary of precautionary area "C" to 48°39'37" N., 122°43'58" W.; thence southerly to 48°38'24" N., 122°44'08" W.; thence southwesterly to 48°36'08" N., 122°45'44" W.; thence southerly to 48°29'30" N., 122°44'41" W.; thence southwesterly to 48°27'37" N., 122°45'27" W.; thence northeasterly and southeasterly along the boundary of precautionary area "RB" to the point of beginning.

§ 161.187 Precautionary areas.

The precautionary areas consist of:

(a) Port Angeles precautionary area. An area enclosed by a line beginning on the shoreline at New Dungeness Spit at 48°11'00" N., 123°06'30" W.; thence due north to 48°17'10" N., 123°06'30" W.; thence southwesterly to 48°10'00" N., 123°27'38" W.; thence due south to the shorelines, thence along the shoreline to the point of beginning. (Note: the Port Angeles precautionary area lies within the CVTMS Area.)

(b) Precautionary area "RA". A circular area of 2,500 yards radius centered at 48°19'46" N., 122°58'34" W;

(c) Precautionary area "RB". A circular area of 2,500 yards radius centered at 48°26'24" N., 122°45'12" W. (The center of precautionary area "RB" is not marked by a buoy.);

(d) Precautionary area "C". A circular area of 2,500 yards radius centered at 48°40'34" N., 122°42'44" W.;

(e) Precautionary area "CA". A circular area of 2,500 yards radius centered at 48°45'19" N., 122°46'26" W.;

(f) Precautionary area "SA". A circular area of 4,000 yards radius centered at 48°11'28" N., 122°49'43" W.;

(g) Precautionary area "SC". A circular area of 1,250 yards radius centered at 48°01'52" N., 122°38'05" W.;

(h) Precautionary area "SE". A circular area of 1,250 yards radius centered at 47°55'25" N., 122°29'29" W.;

(i) Precautionary area "SF". A circular area of 1,250 yards radius centered at 47°45'55" N., 122°26'11" W.;

(j) Precautionary area "SG". A circular area of 1,250 yards radius centered at 47°39'42" N., 122°27'48" W.;

(k) Precautionary area "T". A circular area of 1,250 yards radius centered at 47°34'34" N., 122°27'00" W.;

(l) Precautionary area "TC". A circular area of 1,250 yards radius centered at 47°19'30" N., 122°27'19" W.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 87-5306 Filed 3-12-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-10-FRL-3167-7]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves two amendments to the Oregon State

Implementation Plan (SIP) as submitted by the Oregon State Department of Environmental Quality (ODEQ) on October 15, 1986. These revisions include minor modifications to: (1) OAR 340–24–330 (Light Duty Motor Vehicle Emission Control Cutpoints or Standard) which standardizes the inspection and maintenance (I/M) testing cutpoints for 1972 through 1974 model years and (2) OAR 340–24–335 (Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards) which establishes I/M testing for heavy duty vehicles which are manufactured with catalytic converters. EPA is approving these amendments because those changes will improve the operation and efficiency of the vehicle emission testing program in Portland and Medford.

EFFECTIVE DATE: This action will be effective on May 12, 1987, unless notice is received before April 13, 1987, that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period on this action.

ADDRESSES: Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Air Programs Branch (10A–86–8), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

Department of Environmental Quality, Yeon Building, 811 SW., 6th Street, Portland OR 97204

Comments should be addressed to: Laurie M. Kra, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–0180, FTS: 399–0180.

SUPPLEMENTARY INFORMATION: On June 24, 1980, EPA published in the **Federal Register** (45 FR 42265) final rulemaking on Part D revisions to the Oregon SIP. As part of that action, EPA approved the ongoing Portland Inspection and Maintenance (I/M) program on the condition that ODEQ submit adequate operating rules for this program by July 5, 1980. ODEQ responded on July 26, 1980, by submitting a SIP revision which included regulations OAR 340–24–300 through 340–24–350. On January, 2, 1981 EPA approved this revision (46 FR35).

On October 15, 1986, ODEQ submitted two amendments to this vehicle inspection program operating rules. These revisions are: OAR 340–24–330 (Light Duty Motor Vehicle Emission Control Cutpoints or Standards) simplifies the inspection and maintenance idle test standards for 1972 through 1974 model years by eliminating emission limits specific to the vehicle's make and model substituting uniform limits. The second revision, OAR 340–24–335 (Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards), establishes a new inspection and maintenance idle test standard for heavy duty gasoline vehicles which are manufactured with catalytic converters. Since these changes will improve the operational procedures and will not affect the program's effectiveness, EPA is initiating action today to approve these amendments.

Administrative Review

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 on any or all of the revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

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

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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 May 12, 1987. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and Recording requirements, Incorporation by Reference.

Dated: March 9, 1987.

Lee M. Thomas,

Administrator.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of **Federal Register** on July 1, 1982.

PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations in amended as follows:

Subpart MM—Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1970 is amended by adding paragraph (c) (79) as follows:

§ 52.1970 Identification of Plan

* * * * *

(c) * * *

(79) Revisions to the Oregon State Implementation Plan were submitted by the Director of the Department of Environmental Quality of October 15, 1986. Revisions are: OAR 340–24–330 (Light Duty Motor Vehicle Emission Control Cutpoints or Standards) and OAR 340–24–335 (Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards).

(i) *Incorporation by Reference.* (A) Letter dated October 15, 1986 from the Director of the Department of Environmental Quality to EPA Region 10.

(B) OAR 340–24–330 (Light Duty Motor Vehicle Emission Control Cutpoints or Standards) as adopted by the Environmental Quality Commission on September 12, 1986.

(C) OAR 340–24–335 (Heavy Duty Gasoline Motor Vehicle Emission Control Emission Standards) as adopted by the Environmental Quality Commission on September 12, 1986.

[FR Doc. 87–5440 Filed 3–2–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 65

[A–3–FRL–3167–5]

Approval of a Delayed Compliance Order Issued by the Allegheny County Health Department to Papercraft Corp.

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order (Order) issued by the Allegheny

County Health Department to Papercraft Corporation. The Order requires the Company to bring air emissions from its graphic arts facility in Papercraft Park, Allegheny County, Pennsylvania, into compliance with certain regulations contained in the Federally-approved State Implementation Plan (SIP) for Allegheny County by April 21, 1987. Because of the Administrator's approval, compliance with the Order will preclude suits under the enforcement provisions under section 113 of the Act or the citizen suit provisions under section 304 of the Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule will take effect on March 13, 1987.

ADDRESS: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during normal business hours at the address below.

FOR FURTHER INFORMATION CONTACT: Rosemarie P. Nino, Environmental Protection Specialist, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Telephone: (215) 597–9839.

SUPPLEMENTARY INFORMATION: On August 22, 1986, Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register,** Vol. 51, No. 163, Page 30080 a notice proposing approval of a Delayed Compliance Order issued by the Allegheny County Health Department to Papercraft Corporation Inc. The basis for EPA's conclusion supporting the issuance of the DCO is set forth in that notice. The notice asked for the public comments by September 22, 1986, on the EPA proposal. No public comments were received in response to the notice. The Delayed Compliance Order issued to Papercraft Corporation is hereby approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Papercraft Corporation on a schedule to bring its graphic arts facility in Allegheny County into compliance as expeditiously as practicable with Section 531(A) of Allegheny County Health Department, Rules and Regulations, Article XX, Air Pollution Control, a part of the Federally-approved State Implementation Plan for Allegheny County. The Order requires emission monitoring and reporting requirements as required by sections 113(d)(6) and 113(d)(7) of the Act. If the conditions of the Order are met, it will permit Papercraft Corporation to delay compliance with SIP regulations covered by the Order until April 21, 1987. Papercraft Corporation was unable to comply with these regulations prior to the compliance date called for by the DCO because low solvent coatings were still being developed. EPA has determined that its approval of the Order shall be effective March 13, 1987, because of the need to immediately place Papercraft Corporation on a Federally-enforceable schedule under the Clean Air Act requiring compliance with the applicable requirements of the State Implementation Plan.

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 within 60 days of the date of publication of this notice of final rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Dated: March 9, 1987.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

1. The authority citation for Part 65 continues to read as follows:

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

2. By adding the following entry in alphabetical order to the table in § 65.431.

§ 65.431 EPA Approval of State Delayed Compliance Orders Issued to Major Stationary Sources.

* * * * *

Source	Location	Order No.	Date of FR Proposal	SIP Regulation Involved	Final Compliance Date
* *	* *	*	* *	* *	
Papercraft Corporation	Papercraft Park, Allegheny County, PA.		Aug. 21, 1986	Sec. 531(A) of Allegheny County Health Department, Rules & Regulations, Article XX, Air Pollution Control.	Apr. 21, 1987
* *	*	*	* *	* *	

[FR Doc. 87–5437 Filed 3–12–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 65

[A–3–FRL–3167–4]

Approval of a Delayed Compliance Order Issued by the Allegheny County Health Department to Allegheny Label, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Administrator of the Environmental Protection Agency hereby approves a Delayed Compliance Order (Order) issued by the Allegheny County Health Department to Allegheny Label, Inc. The Order requires the Company to bring air emissions from its graphic arts facility in Cheswick Township, Allegheny County, Pennsylvania, into compliance with certain regulations contained in the Federally-approved State Implementation Plan (SIP) for Allegheny County by April 21, 1987. Because of the Administrator's approval, compliance with the Order will preclude suits under the enforcement provisions under section 113 of the Act or the citizen suit provisions under section 304 of the Act for violations of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule will take effect on March 13, 1987.

FOR FURTHER INFORMATION CONTACT: Rosemarie P. Nino, Environmental Protection Specialist, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Telephone: (215) 597–9839.

ADDRESSES: A copy of the Delayed Compliance Order, and supporting material, and any comments received in response to a prior **Federal Register** notice proposing approval of the Order are available for public inspection and copying (for appropriate charges) during

normal business hours at the address below.

SUPPLEMENTARY INFORMATION: On August 21, 1986, the Regional Administrator of the Environmental Protection Agency's Region III Office published in the **Federal Register**, Vol. 51, No. 162, Page 29949 a notice proposing approval of a Delayed Compliance Order issued by the Allegheny County Health Department to Allegheny Label, Inc. The basis for EPA's conclusion supporting the issuance of the DCO is set forth in that notice. The notice asked for the public comments by September 22, 1986, on the EPA proposal. No public comments were received in response to the notice.

The Delayed Compliance Order issued to Allegheny Label, Inc., is hereby approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order Places Allegheny Label, Inc. on a schedule to bring its graphic arts facility in Allegheny County into compliance as expeditiously as practicable with section 531(A) of Allegheny County Health Department, Rules and Regulations, Article XX, Air Pollution Control a part of the Federally-approved State Implementation Plan for Allegheny County. The Order requires emission monitoring and reporting requirements as required by sections 113(d)(6) and 113(d)(7) of the Act. If the conditions of the Order are met, it will permit Allegheny Label, Inc., to delay compliance with SIP regulations covered by the Order until April 21, 1987. Allegheny Label, Inc. was unable to comply with these regulations prior to the compliance date called for by the DCO because low solvent coatings were still being developed. EPA has determined that its approval of the Order shall be effective (the date of publication of this notice) because of the need to immediately place Allegheny Label, Inc., on a Federally-enforceable schedule under the Clean Air Act requiring compliance with the applicable requirements of the State Implementation Plan. 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 within 60 days of the date of publication of this notice of final rulemaking. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2))

Dated: March 9, 1987.

Lee M. Thomas,

Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDER

1. The authority citation for Part 65 continues to read as follows:

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

2. By adding the following entry in alphabetical order to the table in § 65.431.

§ 65.431 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No. 2	Date of FR proposal	SIP regulation involved	Final compliance date
Allegheny Label, Inc.	Cheswick Township, Allegheny County, PA.		Aug. 21, 1986	Section 531(A) of Allegheny County Health Department, Rules & Regulations, Article XX, Air Pollution Control.	Apr. 21, 1987

[FR Doc. 87-5436 Filed 3-12-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[Region II Docket No. 70; FRL-3168-1]

Designation of Areas for Air Quality Planning Purposes; Revisions to Section 107 Attainment Status Designations for the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Environmental Protection Agency's approval of a request from the Commonwealth of Puerto Rico to revise the air quality designation of the Catano Air Basin from "cannot be classified" to "better than national standards" with respect to the primary and secondary sulfur dioxide standards. Such designations are required by section 107(d) of the Clean Air Act, and may be revised at the request of a state. This action means that the air quality in the Catano Air Basin will be designated as better than both the respective sulfur dioxide primary and secondary standards.

EFFECTIVE DATE: This action is effective April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Conrad Smith, (212) 264-2301.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act directed each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list of national ambient air quality standard attainment status designations for all areas within the state. EPA received such designations from the states and promulgated them on March 3, 1978 (43 FR 8962). As authorized by the Clean Air Act, after EPA review and approval, these designations have been revised from time to time at a state's request.

On October 15, 1985 the Commonwealth of Puerto Rico submitted a request to revise the air quality designation for the Catano Air Basin from "cannot be classified" to "better than national standards" with respect to the areas' attainment of the sulfur dioxide primary and secondary national ambient air quality standards. The redesignation request is based on the results of dispersion modeling and air quality monitoring in the Catano Air Basin.

In the July 9, 1986 issue of the **Federal Register** (51 FR 24854) EPA advised the public that, based on its review of the technical material submitted by the Commonwealth, it was proposing to approve the requested redesignation. The reader is referred to the July 9, 1986 notice for a detailed description of EPA's review criteria and findings. No comments were received by EPA during the comment period which ended on August 8, 1986.

EPA is today approving the redesignation request submitted by the Commonwealth of Puerto Rico. The request has been found to meet the requirements of sections 107 and 301 of the Clean Air Act and applicable EPA guidelines.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (sixty days from publication). This action may not be

challenged later in proceedings to enforce its requirements (See section 307(b)(2).).

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks and Wilderness areas.

Dated: March 9, 1987.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Title 40 Chapter I, Subchapter C; Part 81, Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.355 is amended by removing the entries "Catano Air Basin" and footnote 1 and revising the entry for the "Remainder of AQCR" in the sulfur dioxide attainment status designation table "Puerto Rico SO_2" as follows:

§ 81.355 Puerto Rico.

* * * * *

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Puerto Rico SO_2				
Puerto Rico AQCR				X

* * * * *

[FR Doc. 87–5441 Filed 3–12–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 37

Amendment to Specifications for Medical Examinations of Underground Coal Miners

AGENCY: National Institute for Occupational Safety and Health, Centers for Disease Control, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the specifications for chest roentgenograms (X-rays) obtained in medical examinations of underground coal miners. The amendments will enable X-ray readers in the Department's medical surveillance program for underground coal miners to interpret miners' chest X-rays more accurately to classify any existing or developing pneumoconiosis.

EFFECTIVE DATE: April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Mitzie Martin, Chief, Receiving Center Section, Examinations Processing Branch, Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, WV 26505—Phone: (304) 291–4301 or FTS: 923–4301.

SUPPLEMENTARY INFORMATION: This final rule implements revisions proposed in a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on August 27, 1985 (50 FR 34723), to amend Part 37 of Title 42, Code of Federal Regulations. The NPRM proposed to expand the specification for X-ray film size, specify film/screen combinations and speeds which can be used, and specify the method for obtaining a definitive interpretation of chest X-rays when two readers' interpretations do not agree. Interested persons were invited to comment on the proposed amendment; no comments were received.

The Department of Health and Human Services has determined that this amendment will not significantly impact on a substantial number of small entities and, therefore, does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Public Law 96–354. The Department also has determined that this amendment is not a "major rule" under Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more, result in significant adverse effects in competition, nor otherwise meet the thresholds established in the Executive Order. Therefore, preparation of a regulatory impact analysis is not required.

List of Subjects in 42 CFR Part 37

Health care, Lung diseases, Medical research, Mine safety and health, Miners, X-rays.

Part 37 of Title 42, Code of Federal Regulations, is hereby amended as set forth below.

Dated: December 29, 1986.

Steven A. Grossman,

Acting Assistant Secretary for Health.

Approved: February 19, 1987.

Otis R. Bowen,

Secretary.

PART 37—[AMENDED]

42 CFR 37 is amended as follows:

1. The authority for Part 37 reads as follows:

Authority: Sec. 203, 83 Stat. 763 (30 U.S.C. 843).

2. In § 37.41, paragraphs (a) and (h)(3) are revised to read as follows:

§ 37.41 Chest roentgenogram specifications.

(a) Every chest roentgenogram shall be a single posteroanterior projection at full inspiration on a film being no less than 14 by 17 inches and no greater than 16 by 17 inches. The film and cassette shall be capable of being positioned both vertically and horizontally so that the chest roentgenogram will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then the projection shall include both apices with minimum loss of the costophrenic angle.

* * * * *

(h) To insure high quality chest roentgenograms: * * *

(3) Medium speed film and medium speed intensifying screens are recommended. However, any film-screen combination, the rated "speed" of which is at least 100 and does not exceed 300, which produces roentgenograms with spatial resolution, contrast, latitude and quantum mottle similar to those of systems designated as "medium speed" may be employed.

* * * * *

3. In § 37.52, paragraph (b) is revised to read as follows:

§ 37.52 Method of obtaining definitive interpretations.

* * * * *

(b) Two interpreters shall be considered to be in agreement when they both find either stage A, B, or C complicated pneumoconiosis, or their findings with regard to simple pneumoconiosis are both in the same major category, or (with one exception noted below) are within one minor category (ILO Classification 12-point scale) of each other. In the last situation, the higher of the two interpretations shall be reported. The only exception to the one minor category principle is a reading sequence of 0/1, 1/0, or 1/0, 0/1. When such a sequence occurs, it shall

not be considered agreement, and a third (or more) interpretation shall be obtained until a consensus involving two or more readings in the same major category is obtained.

[FR Doc. 87-5463 Filed 3-12-87; 8:45 am]
BILLING CODE 4160-19-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 86-04; Notice 2]

Federal Motor Vehicle Safety Standards; Seating Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard No. 207, *Seating Systems*, to remove an unnecessary restriction. The standard requires most folding seats to be equipped with a self-locking device for restraining the hinged or folding seat or seat back and with a specific control, such as a knob, lever, push button, etc., for releasing that restraining device. The purpose of the latter requirement is to ensure that the restraining device can be released to enable occupants seated behind such seats to exit the vehicle. The requirement was worded so it applied to a folding or hinged seat regardless of whether anyone can sit behind that seat. The agency concluded that this requirement was unnecessarily restrictive and is therefore amending the standard to make it clear that a specific control is not required if there are no seats behind the folding seat.

DATES: The amendment made by this rule is effective April 13, 1987. Petitions for reconsideration must be received by April 13, 1987.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Guy Hunter, Office of Vehicle Safety Standards, NRM-12, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4915).

SUPPLEMENTARY INFORMATION: Section S4.3 of Standard No. 207 requires hinged or folding occupant seats or occupant seat backs, with some exceptions, to be equipped with a self-locking device for restraining the hinged or folding seat or seat back and a specific control for releasing that restraining device. The purpose of the requirement for the self-locking device is to reduce the forces acting on an occupant of the seat in an accident by preventing the seat or seat back from folding onto the occupant. The purpose of the requirement for the control to release the restraining device is to ensure that occupants seated behind such seats are able to exit the vehicle. Section S4.3.1 specifies that if there is a designated seating position immediately behind a seat equipped with a restraining device, the control for releasing the device must be readily accessible to the occupant of the seat equipped with the device. That section also specifies that if access to the control is required in order to exit from the vehicle, the control must be readily accessible to the occupant of the designated seating position immediately behind the seat.

On July 2, 1986, NHTSA published in the **Federal Register** (51 FR 24176) a notice of proposed rulemaking (NPRM) to remove an unnecessary restriction resulting from the language of section S4.3. The agency noted that it had received a letter asking whether a proposed design would meet that section's requirements. The design was for a folding seat which would be installed between the driver's and assistant's seats in large trucks. When the seat back is folded down, the back of the seat could be used as a console box. When the seat back is raised, the seat back would automatically be locked. To fold the seat back after locking, one must lift the seat back manually, thereby raising a pivot, in order to release the folding seat back. A drawing included with the letter indicated that no seats would be located behind the folding seat, either immediately to the rear or to the sides.

The primary interpretation issue raised by the letter was whether section S4.3 required a specific control to release the restraining device for a folding seat even if no seats are located behind that folding seat. The language of section S4.3 was sufficiently broad to require a control in those circumstances. Since the purpose for requiring a specific control is to ensure that occupants in seats locked behind folding seats are able to exit the vehicle, the agency tentatively concluded that the requirement should not apply if there are no such seats. Accordingly, NHTSA proposed to amend Standard No. 207 to provide an exception to the requirement that folding seats have a specific control for releasing the required restraining device. Under the proposal, a specific control was not to be required if there are no seats, i.e., no designated seating positions or auxiliary seating accommodations, behind the folding seat.

NHTSA received five comments on the NPRM. Chrysler, Ford, General Motors, and Volkswagen submitted comments agreeing with the proposal and its rationale.

The fifth commenter, Mr. Robert Schlegel, argued that the proposal should not apply to folding seats located in front of the cargo areas of station wagons, mini-vans, and certain sport cars. That commenter stated that while such areas are not designated for passenger travel, children often occupy the areas for short trips. That commenter urged that such passengers should be able to move the seat back forward, if necessary to exit the vehicle.

After carefully considering the comments, NHTSA is issuing a final rule along the lines of the proposal. A typographical error in the regulatory text, pointed out by Ford, has been corrected.

NHTSA shares Mr. Schlegel's concern for the safety of children and urges that parents and other drivers not permit children to travel in cargo areas, and instead ensure that the children are safely restrained in child safety seats or safety belts. To the extent that some children do travel in cargo areas, however, the agency does not believe that requiring specific controls to release the restraining device of folding seats located in front of such areas would result in any safety benefits. Children typically enter such areas by climbing over the forward seat or, for some vehicles, through a transverse rear door, and can thus easily exit the vehicle in one or both of these manners.

This amendment becomes effective in 30 days. Since the amendment does not impose any new requirements but instead relieves an unncessary restriction, the agency finds good cause for an effective date within that time period.

The agency has analyzed this amendment and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of this amendment are so minimal that a full regulatory evaluation is not required. Since the amendment relieves a

restriction, it is conceivable that it will result in some minor, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, the agency has evaluated the effects of this action on small entities. I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Few, if any, vehicle manufacturers are considered to be small businesses. Therefore, small businesses, small organizations, and small governmental units will generally be affected by the amendment only to the extent that they purchase motor vehicles. For the reasons discussed above, the amendment will not significantly affect vehicle prices. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has analyzed the effects of this action under the National Environmental Policy Act. The agency has determined that the amendment will not have a significant effect on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, § 571.207 is amended as follows:

1. The authority citation for 49 CFR Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.207 [Amended]

2. S4.3 is revised to read as follows:

S4.3. *Restraining device for hinged or folding seats or seat backs.* Except for a passenger seat in a bus or a seat having a back that is adjustable only for the comfort of its occupants, a hinged or folding occupant seat or occupant seat back shall—

(a) be equipped with a self-locking device for restraining the hinged or folding seat or seat back, and

(b) if there are any designated seating positions or auxiliary seating accommodations behind the seat, either immediately to the rear or to the sides, be equipped with a control for releasing that restraining device.

Issued on March 10, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-5496 Filed 3-12-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 61220-7033]

Fishing Conservation and Management; Groundfish of the Gulf of Alaska

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 15 (amendment) to the Fishery Management Plan for the Groundfish of the Gulf of Alaska (FMP). The amendment revises the management goals and objectives and (1) establishes a single optimum yield (OY) range and an administrative framework procedure for setting annual harvest levels for each species category of groundfish: (2) establishes an administrative procedure for setting prohibited species catch limits (PSCs) for full utilized groundfish species applicable to joint venture and foreign fisheries; (3) revises an existing domestic reporting requirement for catcher/processor and mothership/processor vessels; (4) establishes four time/area closures to non-pelagic trawling around Kodiak Island for a three-year period to protect king crab; and (5) authorizes the Secretary of Commerce (Secretary) to make certain inseason changes to gear regulations seasons, and harvest quotas.

In addition, NOAA is making other regulatory changes to clarify domestic reporting requirements. These additional regulatory changes are not part of Amendment 15, but are new interpretations of existing authority in the FMP. One of these additional changes was substantially altered in response to public comment. Hence, NOAA is reproposing this one regulatory change and requesting additional public comment. The proposed rule will be published within 30 days.

The regulations implementing Amendment 15 and the additional regulatory changes in this rule are intended to implement conservation and management measures that respond to the best available biological and socioeconomic information on the status of the groundfish and king crab fisheries, while providing for full development and utilization of Gulf of Alaska groundfish resources.

EFFECTIVE DATES: April 8, 1987. Section 672.24(c) is effective from April 8, 1987 through December 31, 1989.

ADDRESSES: Copies of the amendment, the environmental assessment (EA), and the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907-274-4563.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The North Pacific Fishery Management Council (Council) approved the six parts of Amendment 15 at its September 24-26, 1986, meeting and submitted it to the Secretary, who received it on November 19, 1986, for review. The Secretary, or his designee, is required by the Magnuson Act to approve, disapprove, or partially disapprove FMPs and FMP amendments before the close of the 95th day following receipt. Following receipt of Amendment 15, the Director, Alaska Region (Regional Director), immediately commenced a review of the amendment to determine whether it was consistent with the national standards, other provisions of the Magnuson Act, and any other applicable law. A Notice of Availability of the amendment was published in the **Federal Register** on November 25, 1986 (51 FR 42603). Proposed implementing regulations were filed with the Office of the **Federal Register** on December 9, 1986, and published December 12, 1986 (51 FR 44812). The Notice of Availability invited public review and comment on the amendment until January 10, 1987. The proposed implementing regulations invited public review and comment on the regulations until January 17, 1987. This final rule implementing Amendment 15 takes three letters of public comments into account. Comments received are summarized and responded to below.

The preamble to the proposed rule described and presented the reasons for each of the five parts of the amendment. The Secretary has reviewed each part of the proposed rule and the reasons for it. He has also reviewed the revisions to the FMP's management goals and objectives, which do not involve rulemaking.

During this review, the Secretary has considered comments received from the public, fishing associations, and interested agencies. He has determined that each part of the amendment, including the revisions to the goals and objectives, is consistent with the

Magnuson Act and other applicable law. He has, therefore, approved each of the proposals as provided for by Section 304 of the Magnuson Act. A summary from the proposed rule of what each part accomplishes follows:

1. A single OY range and an administrative framework procedure for setting annual harvest levels for each species category are established.

A single OY range of 116,000–800,000 metric tons (mt) is established for all of the groundfish species for the Gulf of Alaska. The low end of the range, 116,000 mt, equals the lowest historical groundfish catch during the 21-year period from 1965 to 1985. The high end of the range, 800,000 mt, equals ninety-five percent of the average of the sums of the individual species maximum sustained yields (MSYs) over a period of four years from 1983 to 1987. The average MSY for this period is 845,670 mt. A framework procedure is established that also allows the setting of target quotas (TQs) for each species category on an annual basis without an FMP amendment.

Each year, the Council will recommend a TQ for each species category. The sum of the TQs must fall within the OY range. If the sum were to fall outside of this range, the TQs would be adjusted or an FMP amendment to revise the OY range would be necessary. Twenty percent of each TQ will be set aside as a reserve for possible reapportionment among DAP, JVP, and TALFF during the year. The remaining 80 percent will be initially apportioned among domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF) at the beginning of the year. In recommending TQs, the Council will follow procedures similar to those followed in previous years for apportioning individual species' OYs among DAP, JVP, and TALFF. The procedure, which is outlined at § 672.20(a), promotes full public participation both prior to and during Council meetings, and complies with notice and comment standards set forth by the Administrative Procedure Act.

2. An administrative procedure is established for setting prohibited species catch limits (PSCs) for fully utilized groundfish species applicable to joint venture and foreign fisheries.

A framework administrative procedure is established that allows the Council to recommend, and the Secretary to implement, PSC limits on an annual basis without an FMP amendment. The procedure, which is outlined at § 672.20(b), is similar to the procedure for establishing TQs.

3. An existing domestic reporting requirement is revised for at-sea catcher/processor and mothership/processor vessels.

Any catcher/processor vessel or any mothership/processor, which receives groundfish at sea from a domestic fishing vessel, is required to submit to the Regional Director a weekly catch or receipt report for each weekly period, Sunday through Saturday. This report is required even if no groundfish had been caught or received during the reporting period. A new definition of "processing" is described at § 672.4 to mean the preparation of fish to render it suitable for human consumption or industrial use, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but does not mean heading and gutting, unless additional preparation is done. Under this definition, any vessel that processes any part of its catch or receipts of catch on board within the meaning of "processing" would be required to report its catches or receipts weekly to the Regional Director.

4. Four time/area closures to non-pelagic trawling around Kodiak Island are established for a three-year period to protect king crab.

Two types of time/area closures are defined on the basis of crab concentrations in the areas. Type I areas are where king crab concentrations are high and maximum protection is necessary to promote rebuilding. Type I areas are closed year round to all trawling except with pelagic gear. Type II areas are those where crab are found in smaller numbers than in Type I areas. Some protection from bottom trawling in Type II areas is necessary to promote rebuilding king crab stocks, although rebuilding is not expected to occur as fast as in Type I areas. Type II areas are closed during February 15 through June 15 to all trawling except trawling with pelagic gear in order to protect the king crab stocks while they are in the soft-shell condition.

The Alitak Flats/Towers and Marmot Flats, described at § 672.24(c)(1), are established as Type I areas. In these areas, no person may trawl with, or have on board any trawl other than a pelagic trawl while trawling year around. Chirikof Island and Barnabas areas, described at § 672.24(c)(2), are established as Type II areas. In these areas, no person may trawl with, or have on board a trawl other than a pelagic trawl while trawling during the period from February 15 through June 15.

This measure is in effect for three years, until December 31, 1989. At such time, the Council will review the need for the measure and recommend that either it be extended or revised.

5. The Regional Director's authority to make inseason adjustments in the fishery is modified.

The Regional Director is authorized to make inseason adjustments to prevent overfishing and adjust incorrectly specified TQs and PSC limits on the basis of all relevant information. Information may become available inseason to indicate that a groundfish species has decreased in abundance, and that failure either to reduce the allowable harvest or to institute other measures designed to reduce the harvest of that species could result in overfishing. Likewise, new information relating to the stock status of incidentally caught prohibited species (e.g., crab and halibut) may become available to require the adjustment of PSC limits or season or gear modifications to prevent overfishing of those species. Information may become available inseason to indicate that the status of a groundfish or prohibited species stock is greater than was anticipated at the time harvest levels and other management measures were established, and that certain harvest levels or PSC limits were incorrectly set too low. In this case, closing a fishery at the originally specified harvest quota or PSC limit could result in underutilization of groundfish and fishermen would unnecessarily forego economic benefits unless the TQ or PSC limit were increased and the fishery allowed to continue.

The Regional Director is authorized to make three possible types of adjustments. First, he is allowed to close, open, or extend a fishing season. Second, he is allowed to restrict, or otherwise modify the use of, legal fishing gear in all or part of a management area. Third, he is allowed to adjust specifications of TQs or PSC limits if the best available scientific information on biological stock status indicates they are incorrectly specified. The Regional Director is not authorized to make inseason adjustments to TQs or PCSs that are not initially specified on the basis of biological stock status, unless an adjustment is necessary to prevent overfishing.

The Regional Director is constrained, however, in his choice of management reponses to prevent overfishing by having to select the least restrictive adjustment from the following management measures to achieve the purpose of the adjustment:

(1) Any gear modification that would protect the species in need of conservation, but which would still

allow fisheries to continue for other species;

(2) A time/area closure that would allow fisheries for other species to continue in noncritical areas and time periods; and

(3) Total closure of the management area. An example of a potential gear restriction would be the closure of an area to nonpelagic trawling to prevent overfishing of a botton dwelling species.

The exercise of the Regional Director's authority to adjust TQs or PSC limits requires a determination, based on the best available scientific information, that the biological status or condition of a stock is different from that on which the currently-specified TQs or PSC limits were specified. Any adjustments to a specified TQ or PSC limit must be reasonably related to the change in stock status. The only exception would be if new stock status information indicated that a negotiated PSC limit would result in overfishing.

The types of information that the Regional Director must consider in determining whether stock conditions exist that require an inseason adjustment are as follows, although the Regional Director is not precluded from using information not described but determined to be relevant to the issue:

1. The effect of overall fishing effort within a regulatory area:

2. Catch per unit of effort and rate of harvest;

3. Relative abundance of stocks within the area;

4. The condition of the stock within all or part of a regulatory area:

5. Economic impacts on fishing businesses being affected; or

6. Any other factors relevant to the conservation and management of groundfish species or any incidentally caught species that are designated as a prohibited species or for which a PSC limit has been specified.

The Secretary will publish a notice of adjustments in the **Federal Register** for comment before they are made final, unless the Secretary finds for good cause that such notice and comment is impractical or contrary to the public interest. If the Secretary determines that the prior opportunity for comment should be waived, he will still request comments for fifteen days after the notice is made effective. He will respond to any comments received by publishing a notice in the **Federal Register** that either continues, modifies, or rescinds the adjustment.

Changes in the Final Rule That Differ From the Proposed Rule

NOAA has made changes in the final rule that differ from the proposed rule in response to public comment and in response to the final rule published January 22, 1987 (52 FR 2412) that revised §§ 672.20 and 672.24. The changes are described as follows:

(1) The defintition of "processing" in § 672.2 has been modified to highlight that heading and gutting without additional preparation is not processing under the definition.

(2) The clause, "during which groundfish were caught or received at sea" found at proposed § 672.5(a)(3)(iv) is deleted in the final rule, because it was inconsistent with the requirement at the same section for reports of zero tons caught or received.

(3) The clause, "including making time, area, or gear adjustments" is added to § 672.20(c)(2)(ii) to be consistent with the recently published final rule for single species management at 52 FR 2112 (January 22, 1987).

(4) In § 672.20, paragraphs (d) and (f) are republished in their entirety to show the revisions to subsection designations within these paragraphs, paragraph (c)(2) was revised by redesignating paragraph (iii) as a new paragraph (iv), inserting new paragraph (iii) text in its entirety from the final rule published January 22, 1987 (52 FR 2412) found at § 672.20(b)(1)(3), and redesignating paragraph (d)(4) as (d)(5) and adding a new paragraph (d)(4).

(5) Section 672.22(a)(3) is revised by adding economic impacts on fishing businesses being affected as a factor which may be considered in making determinations concerning inseason adjustments.

(6) Section 672.24 is revised by republishing the complete text of paragraph (b) of the final rule published January 22, 1987 (52 FR 2412), and by revising the heading of paragraph (b) from "Sablefish gear restrictions and allocations" to "Gear restrictions and allocations". NMFS at times has been queried as to whether this part addressed only gear used in fishing for sablefish rather than all groundfish. The regulation, however, is directed at all groundfish.

(7) Section 672.24 is revised by redesignating the words OY to TQ to agree with new concepts contained in this rule.

(8) Section 672.24 is revised by incorporating final rule § 672.24(b)(3) (i) and (ii) that appeared at 52 FR 2112 (January 22, 1987), and changing the words OY to TQ to agree with new concepts contained in this rule.

Public Comments Received

Three letters of comments were received from associations representing fishing interests. Each comment has been summarized and is responded to as follows:

Comment 1: Regulations implementing the target quota framework mechanism should make a definition of acceptible biological catch (ABC) available to determine whether it is an appropriate tool to be used when analyzing target quotas.

Response: The proposed Amendment 15 text includes a definition of ABC. That definition is being revised, however, and is expected to be part of Amendment 16 now being developed by the Council. The Secretary will publish proposed ABCs for groundfish species in the **Federal Register** for public comment each year as part of the framework process of establishing TQs.

Comment 2: A procedure which allows for full understanding of impacts that prohibited species catch limits (PSCs) might have on fishermen is needed, because they might reduce TQs to DAP fishermen in order to provide PSC amounts to JVP and TALFF fisheries and thus serve as a quota on the DAP fishery.

Response: In recent years, the Secretary has set PSCs equal to amounts needed to support JVP and TALFF fisheries. The PSC amounts have been taken from that portion of the biomass, which when added to the retainable quota, would not result in total fish mortality that would jeopardize stocks within the standards set forth by the national standard guidelines. Nonetheless, the Secretary can lower a TQ to provide for a PSC that would result in a lower DAP. This action would not be inconsistent with the Magnuson Act, if the Secretary determined that assigning these PSC amounts to JVP or TALFF fisheries was a conservation and management measure that would promote achieving the optimum yield in the fishery or was otherwise in the interest of the United States.

Comment 3: The preamble does not indicate the schedule to be followed in setting PSC limits.

Response: The proposed rule, as well as this final rule, indicates at § 672.20(c) the schedule to be followed in setting PSC limits.

Comment 4: The regulations do not clearly indicate the effect of a PSC limit being reached.

Response: NOAA intends that, if the Regional Director determines that a PSC limit applicable to a directed JVP or TALFF fishery in any regulatory area or district has been or will be reached, the Secretary will close all or part of the regulatory area or district to all further JVP or TALFF fishing. The final rule has

been revised at § 672.20(c)(2) to clarify this intention.

Comment 5: Unless a real need for advance notification by vessels twenty-four hours prior to commencement of fishing, the requirement should be changed to advance notification within one week of commencing operations.

Response: NOAA has revised § 672.5(a)(3)(i) by deleting the 24-hour time requirement prior to commencement of fishing, and thus require catcher/processor and mothership/processor vessels only to report before starting fishing or receiving groundfish in any area, thereby relieving a burden.

Comment 6: The National Marine Fisheries Service should work closely with the industry to develop reporting requirements that are technically and commercially feasible.

Response: Comment noted. NOAA recognizes the importance of working closely with the industry when developing reporting requirements. By doing so, NOAA saves valuable time and money and the industry avoids overly burdensome and costly regulations.

Comment 7: Discussion in the Regulatory Impact Review (RIR) of costs associated with past reporting requirements is not sound, because it states that overfishing of sablefish by catcher/processors led to a loss in revenue by other gear types, whereas the actual longline fleet's catch was not reduced due to this overharvest.

Response: The NMFS requires an RIR that analyzes impacts, both beneficial and adverse, of regulatory changes in compliance with requirements of the Regulatory Flexibility Act and Executive Order 12291. This analysis is not intended to predict actual impacts in any one subsequent year. Instead, it is intended to portray potential impacts during a reasonable time period for which changes, if any, may be foreseen. The analysis in the RIR of the reporting requirements was intended to consider potential impacts that overharvesting by catcher/processors might have on revenue by other gear types if the reporting requirement were not in place. Incumbent on the NMFS is the responsibility to apply the reporting requirements in a manner that justifies their imposition. On the other hand, these requirements are new and their effectiveness may not yet be fully realized. NOAA expects that, as the NMFS and the fishing industry gain experience in working with them, fishery resources will be conserved in the interests of the socioeconomic wellbeing of the fishing industry.

Comment 8: The fish ticket reporting requirements at § 672.5(a) (1) and (2) are written in a way that may produce multiple reporting of catches, because the definition of "fishing vessel" includes processing vessels and transport ships and reporting by both a catcher vessel and processing vessel might be required. A third identical report might also be required from a transport vessel.

Response: NOAA intends that only operators of fishing vessels, which catch fish in any Gulf of Alaska regulatory area, the territorial sea, or internal waters of the State of Alaska, are initially responsible for submitting State of Alaska fish tickets. NOAA emphasizes that this requirement does not include reports of groundfish sold or delivered to permitted foreign processing vessels in joint venture operations, since such groundfish is already reported under foreign fishing regulations. Sections 672.5(a)(1) and 672.5(a)(2) have been rewritten and are being reproposed for an additional comment period.

Comment 9: The preamble to the proposed rule implies that a trawl vessel could not transit any of the areas that are closed to conserve king crab if a non-pelagic trawl were on board, whereas the rule text at § 672.24(c)(1) implies that only fishing is prohibited, not transiting, a closed area if a non-pelagic trawl were on board.

Response: The intent of the rule is to prohibit trawling with other than pelagic trawls in the closed areas. Transiting the areas with non-pelagic trawls is prohibited. NOAA has revised the word "fishing" to "trawling" in the final rule to remove this ambiguity.

Comment 10: The regulation that prohibits trawling in the Type I and Type II areas around Kodiak Island with bottom trawls on board is unnecessary and costly, because fishermen will be forced to either forego the opportunity to fish in an area or incur the transportation and lost production costs associated with going to port to drop off bottom trawl gear, thereby negating the economies that make at-sea processing feasible.

Response: The purpose of this regulation is to facilitate enforcement. A vessel is able to switch between bottom trawls and pelagic trawls relatively easily after completing a haul back of its gear. While a vessel is trawling, no practical way exists to determine the type of trawl being used. NOAA intends that a rebuttable presumption exists that a vessel is using, or has used, a bottom trawl while trawling if a bottom trawl is onboard that vessel while it is trawling in an area closed to bottom trawling.

Comment 11: The preamble states erroneously that trawl mortality on king crab is unknown while they are in their hardshell condition. There is absolutely no evidence that crab are struck with parts of the trawl gear.

Response: NOAA Notes that some information about trawl mortality on king crab exists. The preamble states that crabs might be struck with parts of the gear. NOAA recognizes that conflicting views exist relative to the incident rate and significance of trawl gear encountering and physically damaging crabs, but believes the situation deserves mention as a possible source of injury or mortality to crab stocks.

Comment 12: Opportunity of public comment prior to implementation of an inseason adjustment must be the rule rather than the exception.

Response: Comment noted. NOAA will always provide an opportunity for public comment prior to implementation of an inseason adjustment unless good cause exists to implement such an adjustment without this opportunity. In such cases, NOAA would provide an opportunity to comment after the adjustment was made effective and, following a review of comments received, would either rescind, modify, or continue the adjustment.

Comment 13: One additional criterion—economic impact on the fishing businesses adversely impacted—should be added to the inseason adjustment authority.

Response: NOAA concurs with the comment. The determination at § 672.22(a)(2), which reads, ". . . adjustments are necessary to prevent the harvest of a TQ for any groundfish species, or the taking of a PSC limit for any prohibited species . . . is found by the Secretary to be incorrectly specified" is interpreted to include preventing harvests that are too low as a result of a TQ or PSC being too restrictive causing loss in economic opportunity for the fishing industry. Economic impact has been added as a criterion in the final rule.

Comment 14: The regulatory text at § 672.20(b) (1) and (2) that addresses specification of PSCs should be changed to make such specifications automatic once JVP and TALFF have been determined and in amounts necessary to harvest target species.

Response: NOAA disagrees with the commenter's assertion that specifying PSCs should be automatic and in amounts necessary to harvest target species. Circumstances may arise whereby setting a PSC in an amount necessary to harvest entire quotas of

other target species may result in fishing mortality that would jeopardize stocks within the meaning of the national standard guidelines. NOAA believes that PSCs can be established at reduced levels to encourage users to develop fishing methods which would result in reduced catches of PSC species.

Comment 15: Section 672.20(b)(2)(ii) that allows taking into account socioeconomic considerations in determining PSCs should be eliminated, because such considerations should be taken into account when determining TQ and its components.

Response: NOAA considers socioeconomic considerations to be relevant and should be considered when determining PSCs as they are when determining TQs. Effects on joint venture and foreign fisheries as a result of closures when PSC limits are reached, and effects on DAP fishermen as a result of additional fishing mortality involve socioeconomic factors that constitute important information under National Standard 2.

Classification

The Regional Director determined that the FMP amendment is necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for this FMP amendment and concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA may be obtained from the Council at the address above.

The Administrator of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) prepared by the Council. A copy of the (RIR/FRFA) may be obtained from the Council at the address above.

The RIR/FRFA also describes the effects this rule will have on small entities. The analysis contained in the RIR/FRFA is largely the same as that contained in the RIR/FRFA, which was summarized for each of the measures in the proposed rule. You may obtain a copy of the FRFA from the Council at the address above.

This rule contains collection of information requirements subject to the Paperwork Reduction Act. The collection of information has been given interim approval by the Office of Management and Budget until March 31, 1987, under OMB Control Number 0648–0016.

Comments on the continuation of the reporting requirements found in this rule should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: NOAA Desk Office.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The State agencies agreed with this determination.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: March 9, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Parts 611 and 672 are amended as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 611.92, paragraphs (c)(1)(i) and (ii); (c)(2)(i)(C); (c)(2)(ii)(A); and (g) are revised to read as follows:

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(c) * * *

(1) TQs, TALFFs, Reserves, and PSC limits.

(i) See 50 CFR Part 672, Subpart B, for procedures to determine target quotas, domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), reserves, and prohibited species catch (PSC) limits. Species listed in paragraph (b)(1) and Table 1 of this section as "unallocated species" or species for which the TALFF is zero, including species for which a PSC limit has been specified, will be treated in the same manner as prohibited species under Section 611.11.

(ii) Apportionment of reserves and initial DAH, and adjustment of PSC limits. See 50 CFR Part 672, Subpart B, for procedures to apportion reserves, initial domestic annual harvest (DAH), and adjustment of PSC limits.

(2) * * *

(i) * * *

(C) As otherwise prohibited by this section or 50 CFR Part 672, Subpart B.

* * * * *

(ii) * * *

(A) TQ for any groundfish species, species group, or species category in a regulatory area or district: the Secretary will issue a notice prohibiting, through December 31, fishing using trawl gear for groundfish in that regulatory area or district by vessels subject to this section, except that if the TQ for sablefish or Pacific cod in a regulatory area or district will be reached, the Secretary will prohibit fishing for groundfish in that regulatory area or district by all vessels subject to this section.

* * * * *

(g) *Inseason adjustments.* See 50 CFR Part 672, Subpart B, for procedures to make inseason adjustments. It is unlawful for any person to conduct any fishing contrary to a notice of inseason adjustment issued under 50 CFR 672.22(a).

* * * * *

PART 672—[AMENDED]

3. The authority citation for 50 CFR Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 672.2, the following definitions are added in proper alphabetical order and the definition for "Regional director" is revised to read:

§ 672.2 Definitions.

* * * * *

Net-sonde device means a sensor used to determine the depth from the water surface at which a fishing net is operating.

* * * * *

Pelagic trawl means a trawl on which neither the net nor the trawl doors (or other trawl-spreading device) operates in contact with the seabed, and which does not have attached to it any protective device (such as chafing gear, rollers, or bobbins) that would make it suitable for fishing in contact with the seabed.

* * * * *

Processing, or *to process,* means the preparation of fish to render it suitable for human consumption, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but does not mean

heading and gutting unless additional preparation is done.

Regional Director means Director, Alaska Region, National Marine Fisheries Service.

* * * * *

Trawl means a funnel-shaped net that is towed through the water for catching fish or other organisms. The net accumulates its catch in the closed, small end (usually called the cod end). This definition includes, but is not limited to, Danish and Scottish seines and otter trawls.

* * * * *

5. Section 672.5 is amended by revising the title of paragraph (a), paragraph (a)(3) introductory text, and paragraphs (a)(3)(i) and (iv) to read as follows:

§ 672.5 Reporting requirements.

(a) Catcher Vesssels. * * *

(a) Catcher/processor and mothership/processor vessels. The operator of any fishing vessel regulated under this Part who processes, within the meaning of process under § 672.2, any groundfish on board that vessel must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Before starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT and the position of such activity.

* * * * *

(iv) After notification of starting fishing by a vessel under paragraph (a)(3)(i) of this section, and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel must submit a weekly catch or receipt report, including reports of zero tons caught or received, for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period. Catch or receipt reports must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 672.4 of this part. These reports must contain the following information:

* * * * *

6. In § 672.7 is amended by redesignating paragraph (h) as paragraph (i) and adding a new paragraph (h) to read as follows:

§ 672.7 General prohibitions.

* * * * *

(h) Conduct any fishing contrary to a notice of inseason adjustment issued under § 672.22(a) of this part:

* * * * *

7. Section 672.20 is amended by revising the section heading, revising paragraphs (a) and (b) in their entirety, redesignating paragraphs (c), (d), and (e) as new paragraphs (d), (e), and (f), adding a new paragraph (c), redesignating paragraph (d)(4) as (d)(5), adding a new paragraph (d)(4), revising redesignated paragraphs (d)(5) and (e)(4), republishing all of paragraph (d), revising paragraph (f)(1), and republishing all of paragraph (f) to read as follows:

§ 672.20 General limitations.

(a) *Harvest limits*—(1) *Optimum yield.* The optimum yield (OY) for the fishery regulated by this section and by 50 CFR 611.92 is a range of 116,000 to 800,000 mt for target species and the "other species" category in the Gulf of Alaska management area, to the extent this amount can be harvested consistently with this Part and 50 CFR Part 611, plus the amounts of "non-specified species" taken incidentally to the harvest of target species and the "other species" category. The species categories are defined in Table 1 of this section.

(2) *Target quota.* The Secretary, after consultation with the North Pacific Fishery Management Council (Council), shall specify the annual target quota (TQ) for each calendar year for each target species and the "other species" category, and shall apportion the TQs among domestic annual processing (DAP), joint venture processing (JVP), reserves, and total allowable level of foreign fishing (TALFF). The sum of the TQs specified must be within the OY range of 116,000 to 800,000 mt for target species and the "other species" category.

(i) The annual determinations of the TQ for each target species and the "other species" category, the reapportionment of reserves, and the reapportionment of surplus DAH may be adjusted, based upon a review of the following:

(A) Assessments of the biological condition of each target species and the "other species" category. Assessments will include, where practicable, updated estimates of maximum sustainable yield (MSY), and acceptable biological catch (ABC); historical catch trends and current catch statistics; assessments of alternative harvesting strategies and related effects on component species and species groups; relevant information relating to changes in groundfish markets; and recommendations for TQ by species or species group.

(B) Socioeconomic considerations that are consistent with the goals and objectives of the fishery management plan for groundfish in the Gulf of Alaska area.

(b) *Prohibited species catch limits* (1) When the Secretary determines after consultation with the Council that the TQ for any species or species group will be fully harvested in the DAP fishery, the Secretary may specify for each calendar year the prohibited species catch (PSC) limit applicable to the JVP and TALFF fisheries for that species or species group. Any PSC limit specified under this paragraph shall be provided as bycatch only, and may not exceed an amount determined to be that amount necessary to harvest target species. Species for which a PSC limit has been specified under this paragraph shall be treated in the same manner as prohibited species under paragraph (e) of this section.

(2) The annual determinations of the PSC limit for each species or species group under paragraph (b)(1) of this section may be adjusted, based upon a review of the following:

(i) Assessments of the biological condition of each PSC species. Assessments will include where practicable updated estimates of maximum sustainable yield (MSY), and acceptable biological catch (ABC); estimates of groundfish species mortality from nongroundfish fisheries, subsistence fisheries, recreational fisheries, and the difference between groundfish mortality and catch. Assessments may include information on historical catch trends and current catch statistics; assessments of alternative harvesting strategies and related effects on component species and species groups; relevant information relating to changes in groundfish markets; and recommendations for PSC limits for species or species group fully utilized by the DAP fisheries:

(ii) Socioeconomic considerations that are consistent with the goals and objectives of the FMP.

(c) *Notices.* (1) Notices of harvest limits and PSC limits. As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying preliminary annual TQ, DAP, JVP, TALFF, reserves, and PSCs amounts for each target species, "other species" category, and species fully utilized by the DAP fisheries. The preliminary specifications of DAP and JVP will be the amounts harvested during the previous year plus any additional amounts the Secretary finds will be harvested by the U.S.

fishing industry. These additional amounts will reflect as accurately as possible the projected increases in U.S. processing and harvesting capacity and to the extent to which U.S. processing and harvesting will occur during the coming year. Public comment on these amounts will be accepted by the Secretary for a period of 30 days following publication. In light of comments received, the Secretary will, after consultation with the Council, specify the final PSC limits and annual TQ for each target species and apportionments thereof among DAP, JVP, TALFF, and reserves. These final amounts will be published as a notice in the **Federal Register** on or about January 1 of each year. These amounts will replace the corresponding amounts for the previous year.

(2) *Notices of closure.* (i) If the Regional Director determines that the TQ for any target species or of the "other species" category in any regulatory area or district in Table 1 has been or will be reached, the Secretary will publish a notice in the **Federal Register** prohibiting directed fishing for that species, as defined at § 672.2, in all or part of that area or district, and declaring such species in all or part of that area or district a prohibited species for purposes of paragraph (e) of this section. During the time that such notice is in effect, the operator of every vessel regulated by this Part or Part 611 must minimize the catch of that species in the area or district, or portion thereof, to which the notice applies.

(ii) If, in making a determination under paragraph (c)(2)(i) of this section, the Regional Director also determines that directed fishing for other groundfish species in the area or district, or portion thereof, to which the notice applies may lead to overfishing of the species for which the TQ has been or will be achieved, the Secretary will, by notice in the **Federal Register**, also prohibit or limit such directed fishing for other groundfish species in a manner, including time, area, or gear adjustments, that will prevent overfishing of the species for which the TQ has been or will be taken.

(iii) When making closures or imposing limitations under paragraphs (c)(2) (i) and (ii) of this section, the Regional Director will take into account the following considerations and may allow continued fishing with certain gear types, issuing findings relevant to these considerations:

(A) The risk of biological harm to a groundfish species for which the TQ has been reached;

(B) The risk of socioeconomic harm to authorized users of the groundfish for which the TQ has been reached; and

(C) The impact that a continued closure might have on the socioeconomic well-being of other domestic fisheries.

(iv) If the Regional Director determines that a PSC limit applicable to a directed JVP or TALFF fishery in any regulatory area or district in Table 1 has been or will be reached, the Secretary will publish a notice of closure in the **Federal Register** closing all further JVP or TALFF fishing in all or part of the regulatory area or district concerned.

(d) *Apportionment of reserves, initial DAH, and adjustment of PSC limits*—(1) *Apportionment of reserves.* (i) In accordance with paragraph (d)(5) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council, may reapportion to TALFF, part or all of the reserves specified in Table 1.

(ii) As soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary may apportion to DAH, in accordance with paragraph (d)(3) of this section, any amounts of any reserve that he determines to be needed to supplement DAH.

(2) *Apportionment of surplus DAH to TALFF.* In accordance with paragraph (d)(5) of this section and as soon as practicable after April 1, June 1, and August 1, and on such other dates as he determines necessary, the Secretary, after consultation with the Council, may apportion to TALFF, any part of the DAH amounts that he determines will not be harvested by U.S. fishermen during the remainder of the year.

(3) *Allocation of increases or decreases in DAH among DAP and JVP.* The Secretary may allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (d)(1)(ii) and (d)(2) of this section among the DAP and JVP components of DAH.

(4) *Adjustment of PSC limits resulting from apportionments.* If the Secretary makes inseason apportionments of target species, the Secretary may proportionately increase any PSC limit amount of species fully utilized by the DAP fishery if such increase will not result in overfishing of that species. Any adjusted PSC limit may not exceed the amount determined to be necessary to harvest a target species.

(5) *Standards and procedure for apportionment*—(i) *General.* The Secretary shall apportion to TALFF under paragraphs (d)(1) and (d)(2) of this section only those amounts which he determines will not be harvested by vessels of the United States during the remainder of the fishing year. The amount of reserve which the Regional Director determines will be harvested by vessels of the United States may, in the discretion of the Secretary, either be apportioned to the estimate of domestic annual harvest (DAH), or retained in the reserves as eligible for later apportionment under paragraph (d) of this section.

(ii) *Factors.* In determining whether or not amounts proposed to be apportioned under paragraphs (d)(1) and (d)(2) of this section will be harvested by vessels of the United States during the remainder of the fishing year, the Regional Director will consider the following factors, although he may not be limited to these factors:

(A) Reported U.S. catch and effort by species and area compared to previously projected U.S. harvesting capacity;

(B) Projected U.S. catch and effort by species and area for the remainder of the fishing year;

(C) Amounts of fish, particularly U.S. harvested fish, already purchased or processed by U.S. fish processors during the fishing year, compared to previously projected processing capacity of U.S. fish processors;

(D) Projected processing capacity, and utilization of that capacity for the processing of U.S. harvested fish, by U.S. fish processors for the remainder of the fishing year;

(E) Amounts of U.S. harvested fish already received or processed by foreign fishing vessels, compared to previously projected levels of such receipt or processing; and

(F) The need to maintain orderly fisheries despite any misspecifications of bycatch species amounts in mixed species fisheries.

(iii) *Allocation of increases and decreases in DAH between DAP and JVP.* The Secretary may allocate any increases or decreases in DAH amounts resulting from apportionments under paragraphs (d)(1) and (d)(2) of this section between DAP and JVP.

(iv) *Public comment.* (A) Comments may be submitted to the Regional Director concerning:

(*1*) Whether, and the extent to which, vessels of the U.S. will harvest reserve or DAH amounts during the remainder of the fishing year; and

(*2*) Whether, and the extent to which, U.S. harvested groundfish can or will be processed by U.S. fish processors or

received at sea by foreign fishing vessels.

(3) Comments should be addressed to Director, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, and must be received by the Regional Director no later than five (5) days before the relevant date specified in paragraph (d)(1) or (d)(2) of this section. When the Secretary determines that apportionment is required on dates other than those specified in paragraph (d)(1) or (d)(2) of this section, he will publish a notice in the **Federal Register** on the proposed apportionment which will state the period during which comments may be submitted. If the Secretary finds it necessary to apportion additional amounts without affording a prior opportunity for public comment in order to prevent the premature closure of a fishery, public comments will be invited for a period of fifteen (15) days after the effective date of the apportionment. The Secretary will consider all timely comments in deciding whether to make a proposed apportionment or to modify an apportionment that has previously been made, and will publish responses to those comments in the **Federal Register** as soon as is practicable.

(B) The Secretary will consider any timely comments submitted in accordance with this paragraph in determining whether, and to what extent, vessels of the U.S. will harvest reserve or DAH amounts during the remainder of the fishing year, and whether any part of such amounts will be allocated to TALFF under paragraphs (d)(1) and (d)(2) of this section.

(C) The Regional Director will compile, in aggregate form, the most recent available reports on

(1) The level of catch and effort by vessels of the United States fishing for groundfish in the Gulf of Alaska; and

(2) The amounts of U.S. harvested groundfish taken in the Gulf of Alaska and processed by U.S. fish processors or delivered at sea to foreign fishing vessels. These data will be available for public inspection during business hours (8:00 a.m.–4:30 p.m. Monday–Friday) at the National Marine Fisheries Service Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska 99802, during the last 25 days of each comment period.

(v) *Procedure.* As soon as practicable after each of the dates specified in, and each additional date selected under paragraphs (d)(1) or (d)(2) of this section, the Secretary will publish in the **Federal Register:**

(A) Any reserve amounts to be apportioned to TALFF or DAH;

(B) Any DAH amounts to be apportioned to TALFF;

(C) The distribution of amounts apportioned to or from DAH among DAP and JVP;

(D) Any adjustments in PSC limit amounts made under this section;

(E) The reasons for any apportionments and their distribution; and

(F) Responses to any comments received.

(e) *Prohibited species.* * * *

(4) In any regulatory area where the TQ in Table 1 of paragraph (c) for any species is "0" (zero), any catch of that species by a vessel regulated by this part, in that fishing area, will be considered catch of a "prohibited species" and will be treated in accordance with this paragraph.

(f) *Halibut.* (1) If during any year, the Regional Director determines that the catch of halibut for that year by U.S. vessels delivering their catch to foreign vessels (JVP vessels) or U.S. vessels delivering their catch to U.S. fish processors (DAP vessels) will reach the applicable prohibited species catch (PSC) limit for halibut established under paragraph (f)(2) of this section, he will publish a notice in the **Federal Register** prohibiting fishing with trawl gear other than pelagic trawl gear for the rest of the year by the vessels and in the area to which the PSC limit applies, subject to paragraph (f)(2)(iv) of this section.

(2)(i) As soon as practicable after October 1 of each year, the Secretary, after consultation with the Council, will publish a notice in the **Federal Register** specifying the proposed halibut PSC limits for JVP vessels and DAP vessels. Each halibut PSC may be apportioned among the regulatory areas and districts of the Gulf of Alaska. Public comments on the proposed halibut PSC limits will be accepted by the Secretary for 30 days after the notice is published in the **Federal Register.** The Secretary will consider all timely comments in determining, after consultation with the Council, the final halibut PSC limits for the next year. A notice of these final halibut PSC limits will be published in the **Federal Register** as soon as practicable after December 15 and will also be made available to the public by the Regional Director through other suitable means.

(ii) The Secretary will base the annual halibut PSC limits upon the following types of information:

(A) Estimated halibut bycatch in prior years;

(B) Expected changes in groundfish catch;

(C) Expected changes in groundfish biomass;

(D) Current estimates of halibut biomass and stock condition;

(E) Potential impacts of expected fishing for groundfish on halibut stocks and U.S. halibut fisheries;

(F) The methods available for and costs of reducing halibut bycatches in groundfish fisheries; and

(G) Other biological and socioeconomic information that affects the consistency of halibut PSC limits with the objectives of this part.

(iii) The Secretary may, by notice in the **Federal Register,** change the halibut PSC limits during the year for which they were specified, based on new information of the types set forth in paragraph (f)(2)(ii) of this section.

(iv) When the JVP or DAP vessels to which a halibut PSC limit applies have caught an amount of halibut equal to that PSC, the Regional Director may, by notice in the **Federal Register,** allow some or all of those vessels to continue to fish for groundfish using bottom-trawl gear under specified conditions, subject to the other provisions of this part. In authorizing and conditioning such continued fishing with bottom-trawl gear, the Regional Director will take into account the following considerations, and issue relevant findings:

(A) The risk of biological harm to halibut stocks and of socioeconomic harm to authorized halibut users posed by continued bottom trawling by these vessels;

(B) The extent to which these vessels have avoided incidental halibut catches up to that point in the year;

(C) The confidence of the Regional Director in the accuracy of the estimates of incidential halibut catches by these vessels up to that point in the year;

(D) Whether observer coverage of these vessels is sufficient to assure adherence to the prescribed conditions and to alert the Regional Director to increases in their incidental halibut catches; and

(E) The enforcement record of owners and operators of these vessels, and the confidence of the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources.

8. Section 672.22 is amended by revising the section heading, and paragraphs (a) and (b) to read as follows:

§ 672.22 Inseason adjustments.

(a) *General.* (1) Inseason adjustments issued by the Secretary under this paragraph include:

(i) The closure, extension, or opening of a season in all or part of a management area;

(ii) Modification of the allowable gear to be used in all or part of a management area; and

(iii) The adjustment of TQ and PSC limits.

(2) *Determinations.* (i) Any inseason adjustment under this paragraph must be based upon a determination that such adjustments are necessary to prevent:

(A) The overfishing of any species or stock of fish or shellfish; or

(B) The harvest of a TQ for any groundfish species or the taking of a PSC limit for any prohibited species, which on the basis of the best available scientific information is found by the Secretary to be incorrectly specified.

(ii) The selection of the appropriate inseason management adjustments under paragraphs (a)(1)(i) and (a)(1)(ii) of this section must be from the following authorized management measures and must be based upon a determination by the Regional Director that the management adjustment selected is the least restrictive necessary to achieve the purpose of the adjustment:

(A) Any gear modification that would protect the species in need of conservation, but which would still allow other fisheries to continue; or

(B) An inseason adjustment which would allow other fisheries to continue in noncritical areas and time periods; or

(C) Closure of a management area and season to all groundfish fishing.

(iii) The adjustment of a TQ or PSC limit for any species under paragraph (a)(1)(iii) of this section must be based upon a determination by the Regional Director that the adjustment is based upon the best available scientific information concerning the biological stock status of the species in question and that the currently specified TQ or PSC limit is incorrect. Any adjustment to a TQ or PSC limit must be reasonably related to the change in biological stock status.

(3) *Data.* All information relevant to one or more of the following factors may be considered in making the determinations required under paragraph (a)((2) of this section:

(i) The effect of overall fishing effort within a regulatory area;

(ii) Catch per unit of effort and rate of harvest;

(iii) Relative abundance of stocks within the area;

(iv) The condition of the stock within all or part of a regulatory area;

(v) Economic impacts on fishing businesses being affected; or

(vi) Any other factor relevant to the conservational and management of groundfish species for which a TQ has been specified or incidentally caught species which are designated as prohibited species or for which a PSC limit has been specified.

(b) *Procedure.* (1) No inseason adjustment issued under this section will take effect until:

(i) The Secretary has filed the proposed adjustment for public inspection with the Office of the Federal Register, and

(ii) The Secretary has published the proposed adjustment in the **Federal Register** for public comment for a period of thirty (30) days before it is made final, unless the Secretary finds for good cause that such notice and public procedure is impracticable, unnecessary, or contrary to the public interest.

(2) If the Secretary decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Director for a period of fifteen (15) days after the effective date of the notice.

(3) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data upon which an adjustment was based.

(4) If written comments are received during any such 15-day period which oppose or protest an inseason adjustment issued under this section, the Secretary will reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, will either:

(i) Publish in the **Federal Register** a notice of continued effectiveness of the adjustment, responding to comments received; or

(ii) Modify or rescind the adjustment.

(5) Notices of inseason adjustments issued by the Secretary under paragraph (a) of this section will include the following information:

(i) A description of the management adjustment;

(ii) The reasons for the adjustment and the determinations required under paragraph (a)(2) of this section; and

(iii) The effective date and any termination date of such adjustment. If no termination date is specified, the adjustment will terminate on the last day of the fishing year.

* * * * *

9. Section 672.24 is amended by revising paragraph (b), and adding a new paragraph (c) to read as follows:

§ 672.24 Gear limitations.

* * * * *

(b) *Gear restrictions and allocations.*—(1) *Eastern Area.* No person may use any gear other than hook and line and trawl gear when fishing for groundfish in the Eastern Area. No person may use any gear other than hook and line gear to engage in directed fishing for sablefish. When vessels using trawl gear have harvested 5 percent of the TQ for sablefish during any year, further trawl catches of sablefish must be treated as prohibited species as provided by paragraph (b)(3)(ii) of this section.

(2) *Central and Western Areas.* During 1987 and 1988 in the Western Area, hook and line gear may be used to take up to 55 percent of the TQ for sablefish; pot gear may be used to take up to 25 percent of that TQ; and trawl gear may be used to take up to 20 percent of that TQ. Beginning with 1987 in the Central Area and 1989 in the Western Area, hook and line gear may be used to take up to 80 percent of the sablefish TQ in each area and trawl gear may be used to take up to 20 percent of that TQ. No person may use any gear other than hook and line, pot, or trawl gear in fishing for groundfish during 1987 and 1988 in the Western Area. Except in the Western Area during 1987 and 1988, no person may use

(i) When the Regional Director determines that the share of the sablefish TQ assigned to any type of gear for any year and any area or district under this paragraph may be taken before the end of that year, the Secretary, in order to provide adequate bycatch amounts to ensure continued groundfish fishing activity by that gear group, will, by notice in the Federal Register, prohibit directed fishing for sablefish by persons using that type of gear for the remainder of that year.

(ii) If the share of the sablefish TQ assigned to any type of gear for any year and any area or district under this paragraph is reached, further catches of sablefish must be treated as a prohibited species by persons using that type of gear for the remainder of that year.

(c) *Trawls other than pelagic trawls.* (1) No person may trawl in any of the following areas in the vicinity of Kodiak Island (see Figure 1, Area Type I) from a vessel having any trawl other than a pelagic trawl either attached or on board:

(i) *Alitak Flats and Towers Areas:* All water of Alitak Flats and the Towers Areas enclosed by a line connecting the following seven points in the order listed:

Reference point	N. lat.	W. long.	Land description
a	56°59'4"	154°31'1"	Low Cape.
b	57°00'0"	155°00'0"	

Reference point	N. lat.	W. long.	Land description
c	56°17'0"	155°00'0"	
d	56°17'0"	153°52'0"	
e	56°33'5"	153°52'0"	Cape Sitkinak
f	56°54'5"	153°32'5"	East point of Twoheaded Island
g	56°56'0"	153°35'5"	Kodiak Island, thence, along the coastline of Kodiak Island until intersection of
a	56°59'4"	154°31'1"	Low Cape.

(ii) *Marmot Flats Area:* All water enclosed by a line connecting the following five points in the clockwise order listed:

Reference point	N. lat.	W. long.	Land description
a	58°00'0"	152°30'0"	
b	58°00'0"	151°47'0"	
c	57°37'0"	151°47'0"	
d	57°37'0"	152°10'1"	Cape Chiniak, thence, along the coastline of Kodiak Island to
e	57°54'5"	152°30'0"	North Cape.
a	58°00'0"	152°30'0"	

(2) From February 15 to June 15, no person may trawl in any of the following areas in the vicinity of Kodiak Island (see Figure 1, Area Type II) from a vessel having nay trawl other than a pelagic trawl either attached or on board:

(i) *Chirikof Island Area:* All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter clockwise order listed:

Reference point	N. lat.	W. long.
a	56°07'0"	155°13'0"
b	56°07'0"	156°00'0"
c	55°41'0"	156°00'0"
d	55°41'0"	155°13'0"
a	56°07'0"	155°13'0"

(ii) *Barnabas Area:* All waters enclosed by a line connecting the following five points in the counter clockwise order listed:

Reference point	N. lat.	W. long.	Land description
a	57°00'0"	153°18'0"	Black Point.
b	56°56'0"	153°09'0"	
c	57°22'0"	152°18'5"	South Tip of Ugak Island.
d	57°23'5"	152°17'5"	North Tip of Ugak Island.
e	57°25'3"	152°20'0"	Narrow Cape, thence, along the coastline of Kodiak Island to
f	57°04'2"	153°30'0"	Cape Kasick to
a	57°00'0"	153°18'0"	Black Point, incl. inshore waters.

(3) Each person using a trawl to fish in any area limited to pelagic trawling under paragraph (c)(1) and (c)(2) of this section must maintain in working order on that trawl a properly functioning, recording net-sonde device, and must retain all net-sonde recordings aboard the fishing vessel during the fishing year.

(4) No person using a trawl to fish in any area limited to pelagic trawling under paragraphs (c)(1) and (c)(2) of this section will allow the footrope of that trawl to be in contract with the seabed for more than 10 percent of the period of any tow, as indicated by the net-sonde device.

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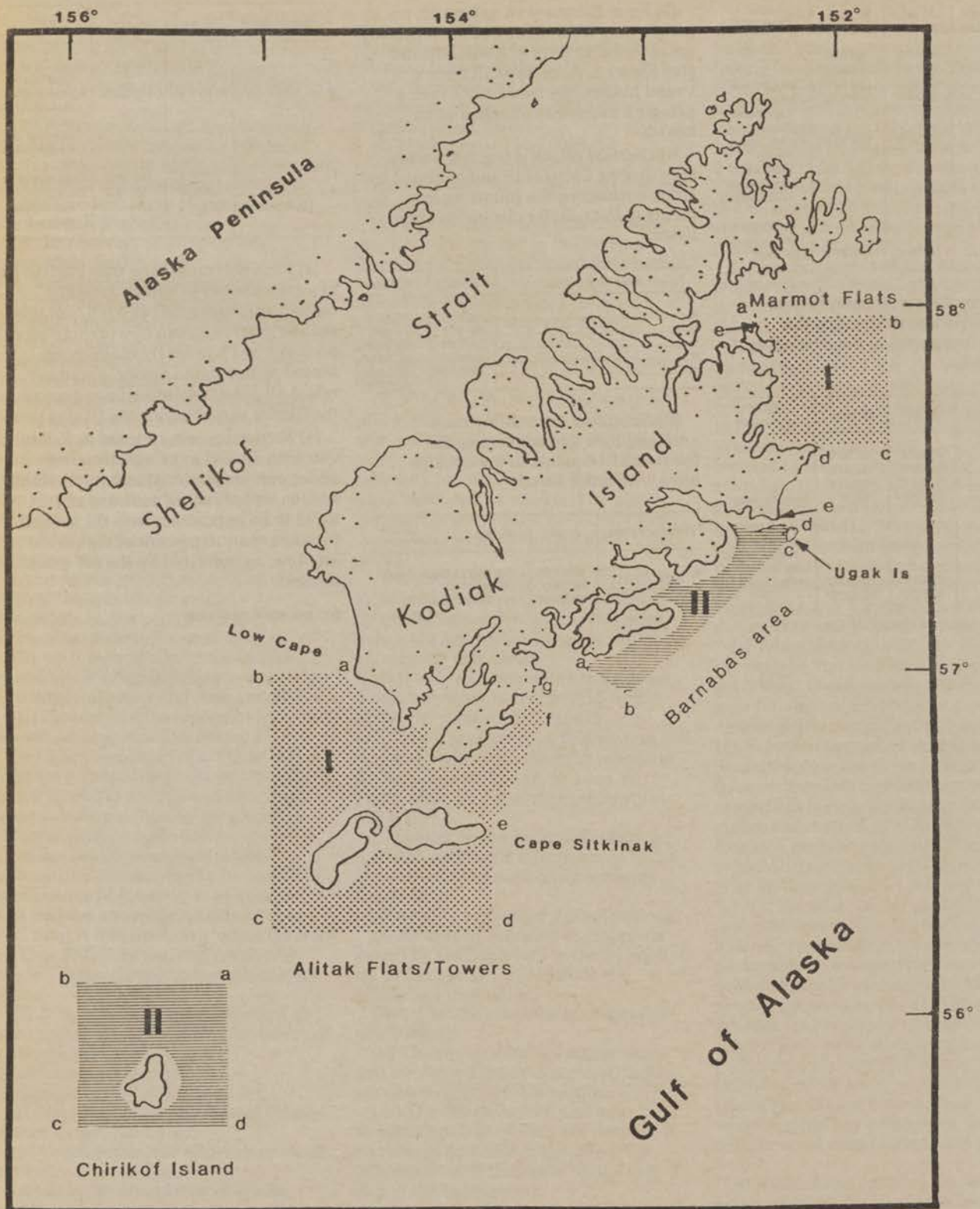

Figure 1. Areas around Kodiak Island closed to trawling except with pelagic trawls. TYPE I areas are closed year round. TYPE II areas are closed February 15 to June 15. See Section 672.24, Gear Limitations, for coordinate descriptions.

[FR Doc. 87-5358 Filed 3-10-87; 11:43 am]

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Proposed Rules

Federal Register
Vol. 52, No. 49
Friday, March 13, 1987

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Federal Protection of Private Sector Health and Safety Whistleblowers

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments.

SUMMARY: The Administrative Conference's Committee on Adjudication has under consideration a draft recommendation on federal protection of private sector health and safety whistleblowers. Interested persons are invited to comment on the draft recommendation.

DATE: Comments due by Monday, April 6, 1987.

ADDRESS: Submit comments to Deborah Ross, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Deborah Ross, 202-254-7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Adjudication has been studying federal statutory protection of private sector whistleblowers who raise health and safety concerns about the workplace. The Conference's consultant for this project, Eugene R. Fidell, of the Washington law firm Klores, Feldesman and Tucker, has submitted a report analyzing the operation of the federal statutes in this area.

The report points out that over a dozen federal laws protect private sector employees in a variety of industries, such as mining, nuclear power, and railroad, but omit protection in other industries, for example aeronautics and pharmaceutical production. In addition, the existing laws lack consistency. They assign investigatory, adjudicatory and review responsibilities to various agencies, and contain differing limitation periods, definitions of protected conduct and available remedies, among others.

The Committee on Adjudication has developed draft recommendations based on Mr. Fidell's report. While taking no position on whether additional industries should be covered by whistleblower laws, the Committee believes that uniform treatment of whistleblowers would provide a more coherent statutory scheme, and better serve their underlying health and safety purposes. The draft recommendations address these inconsistencies, and in addition, make suggestions for improved adjudicatory procedures.

The Committee is seeking comments from interested persons on its draft recommendations. They must be received by Monday, April 6, 1987. Both the recommendations and Mr. Fidell's report are available from the Administrative Conference.

Draft Recommendation: Federal protection of private sector health and safety whistleblowers.

Federal Protection of Private Sector Health and Safety Whistleblowers—Preliminary Recommendations (For Comment)

Private sector employees who make disclosures concerning health and safety matters pertaining to the workplace are protected against retaliatory actions by over a dozen federal laws. By common usage these employees, as well as others who make similar disclosures concerning fraud or other misconduct (but who are beyond the Conference's current study),[1] have become known as whistleblowers. Under current statutes, for example, nuclear power plant workers, miners, truckers, and farm laborers are specifically protected when acting as whistleblowers. Other workers may be covered under the more general protections granted by the Occupational Safety and Health Act (OSHA) or various environmental laws.

The protection provided employees by the so-called whistleblower statutes under study here serves the important public interest of helping ensure the health and safety of workers in the various regulated industries or activities, as well as that of the general public, which may suffer the consequences of any lapses. The statutes are intended to create an environment where an individual can feel free to bring a hazardous or unlawful situation to the attention of the public or the government without fear of personal reprisal. Such disclosures can be a valuable safety valve when dealing with mass transportation and with potential hazards in the workplace and in interstate commerce, especially where the public lacks the knowledge or access to information necessary to be fully informed on these important issues.

In its examination of the current federal statutory scheme designed to protect whistleblowers in the private sector, the Conference found that, as currently written, the various whistleblower statutes lack uniformity in a number of areas including the following:

1. Investigative responsibility is assigned to numerous agencies, including several divisions within the Department of Labor (DOL), the Department of the Interior and other agencies, with little coordination between them.

2. Adjudicatory responsibility is similarly divided. For example, while several statutes provide for adjudication by a DOL administrative law judge, some provide for decisions by other agencies or for trial in the district court.

3. Judicial review likewise differs. Some statutes provide for review in the district court, some in the court of appeals. And for some, no review is available.

4. Statutes of limitations for filing a complaint range from 30 days to 180 days.

5. Exhaustion of internal employee-mandated grievance procedures is typically not required.

6. Definitions of protected conduct differ according to statute. For example, protected disclosure may include any disclosure, disclosure to "the public," to the media, or to the responsible agency, a union or employer. Protected conduct may or may not include refusals to work.

7. In certain cases where the agency declines to proceed with the complaint (under either the OSHA or the Asbestos Hazard Emergency Response Act), the complaining employee is left without judicial review of *that* decision, and without a federal remedy.

As a result of these statutory incongruities, available procedures and protections may differ depending solely

[1] The Conference has limited its study to health and safety related disclosures because in this area a pattern of federal statutory protections has emerged with sufficient experience to allow a study.

upon the industry to which an aggrieved employee belongs. For example, an employee seeking protection under the Clean Air Act (CAA) has 30 days in which to file a complaint, while an employee filing under provisions of the Migrant Seasonal and Agricultural Worker Protection Act (MSAWPA) has 180 days. And while both CAA and MSAWPA violations are investigated by the Wage and Hour Division of the Department of Labor, adjudication of CAA complaints is before a DOL administrative law judge; while MSAWPA complaints are adjudicated in the district courts. The Conference has concluded that this lack of uniformity does not appear to be reasoned, but simply reflects the incremental enactment of the various statutes over a period of years.

The study also indicated that access to written decisional precedents in these cases needs to be improved. The Department of Labor's Office of Administrative Law Judges does not yet publish its decisions (although it has recently announced plans to do so), and a unified index for these decisions and those of other agency adjudicative bodies does not exist. Publication and indexing of existing case law should help narrow the issues for future adjudications, contribute to a sense of fairness in the adjudicatory process, and improved case management. In addition, the study found that, with certain exceptions, there is little interaction between the program agency and the investigating/adjudicating agency, thus diminishing the involvement of the lead program agencies. Procedures should be established by which program agencies provide assistance to complaint-handling agencies, and decisions are subsequently reported to the program agency.

While the Conference study focused primarily on existing law, it also discussed areas of law where gaps in whistleblower protection exist. These include the aviation and aeronautics industries, vessel construction and operation, and manufacturing and production of food, drugs, medical devices or consumer products generally. Because of the health and safety concerns present in these regulated industries, Congress may wish to consider granting these workers whistleblower protection conforming to the legislation recommended below.

Finally, the Conference notes that there is a growing amount of litigation in state courts concerning whistleblowers, but does not take a position on whether federal statutes do or should preempt state law in this field. (ACUS Recommendation 84–5, Preemption of State Regulation by Federal Agencies, recommends that Congress address forseeable preemption issues, and advises regulatory agencies to be aware of situations where a conflict might arise.)

With the increasing interest in these matters by Congress, the media and the general public, the Conference hopes that its study will provide a foundation for needed improvements.

Recommendations

I. In the interest of uniform treatment of private sector health and safety whistleblowers, Congress should enact whistleblowing legislation to replace all extant federal private sector health and safety whistleblowing provisions. That legislation should include:

(A) Assignment of preliminary investigative responsibility to the Secretary of Labor for all private sector health and safety whistleblowing retaliation cases.

(B) Authorization for the Secretary to explore alternative means of resolving these disputes, with the consent of the parties, (see ACUS Recommendation 86–3, Agencies Use of Alternative Means of Dispute Resolution.)

(C) Provision for an opportunity for an on-the-record APA hearing by DOL Administrative Law Judges with discretionary review by the Secretary of Labor, judicial review in the courts of appeals, and enforcement in the district courts [provided that certain cases may be assigned to other appropriate adjudicatory agencies such as the Occupational Safety and Health Review Commission, or Federal Mine Safety and Health Review Commission where such forums already handle related cases].

(D) A grant of subpoena power to the Secretary of Labor for whistleblowing investigations and hearings, with provision for judicial enforcement; and

(E) A grant of rulemaking authority to the Secretary of Labor with respect to investigative and adjudicatory procedures, notice posting requirements and mandatory coordination with program agencies;

(F) A single definition of protected conduct;

(G) A single statute of limitations of not less than 180 days;

(H) A single provision for remedies, (including possible licensing and contracts sanctions).

II. Subject to action by Congress as recommended above, the Secretary of Labor should:

(A) Promulgate rules of appellate procedure governing practice and procedure in connection with the Secretary's review of decisions in whistleblower cases by the Office of Administrative Law Judges;

(B) Transfer all private sector health and safety whistleblowing investigative responsibility to the Occupational Safety and Health Administration, because that agency currently receives by far the largest number of private sector health and safety whistleblowing complaints;

(C) Develop, in consultation with the agencies responsible for the substantive regulatory programs, detailed written procedures that are as nearly uniform as the Secretary deems practicable for coordinating investiagation, adjudication and follow-up in whistleblowing cases; and

(D) In accordance with the Freedom of Information Act, 5 U.S.C. 552(a)(2)(A), cause to be indexed and published all ALJ and Secretarial decisions in whistleblowing cases, including those rendered prior to January 1, 1987.

III. Where congress has judged it necessary to regulate an industry so as to ensure the safety of its workplace, products, services, or the environment, it is also appropriate that enforcement of the regulatory scheme be strengthened by providing whistleblower protection for the industry's employees who wish to report statutory violations. Consequently, Congress should consider expanding whistleblower protection to workers in industries who may currently lack such protection.

Jeffrey S. Lubbers,

Research Director.

March 9, 1987.

[FR Doc. 87–5434 Filed 3–12–87; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Parts 800 and 810

Grain Handling Practices

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (Service) proposes new regulations under the United States Grain Standards Act (USGSA) concerning grain handling practices. The proposed regulations prohibit the recombining or adding of dockage or foreign material to grain and prohibit the blending of different kinds of grains. The proposal would also define both foreign material and broken kernels for corn and sorghum. Further, the Service

reopens for additional comments the October 2, 1986, (51 FR 35224) proposed rule entitled Official U.S. Standards for Grain as supplemented in a November 20, 1986 (51 FR 41971), proposed rule. In reopening the October 2 proposal, the Service is amending it to change from May 1, 1987, to May 1, 1988, the proposed effective date for certificating to the nearest tenth of a percent dockage in barley, flaxseed, rye, sorghum, and triticale; foreign material in sunflower seed; and foreign material and fines in mixed grain.

DATE: Comments must be received on or before April 13, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250, telephone (202) 382–1738.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail.

Telex users may respond as follows:

To: Lewis Lebakken, TLX: 7607351, ANS: FGIS UC.

All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

Comments on the information collection and recordkeeping requirements contained in these proposed regulations: Marina Gatti, Desk Officer for the Federal Grain Inspection Service, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION: Lewis Lebakken, Jr., address as shown above, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed action has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further, the standards are applied equally to all entities by FGIS employees and licensed persons.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) and Section 3504(h) of that Act, the information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review. Comments concerning these requirements should be directed to Marina Gatti, Desk Officer for the Federal Grain Inspection Service, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Proposed Action

The Grain Quality Improvement Act of 1986 (GQIA) amends the USGSA to prohibit the recombining or adding of dockage and foreign material to grain as of May 1, 1987. This requirement applies to all persons handling grain not just those receiving official inspection or weighing services. The Service proposes to establish a new section under Part 800 to specifically provide for the grain handling requirements set forth in the GQIA.

Implementing the GQIA also requires changes to 7 CFR Part 810. Dockage or foreign material must be defined for each grain as well as broken corn/kernels. The Official U.S. Standards for Grain, as proposed on October 2, 1986, (51 FR 35224), included the required definitions for all grains except for the individual components of the factor "broken corn and foreign material" in the corn standards and the individual components of the factor "broken kernels, foreign material, and other grains" in the sorghum standards. The Service proposes to reopen and supplement the October 2, 1986, proposal to establish the necessary definitions for corn and sorghum.

Comments on the October 2, 1986, proposal were to have been submitted on or before December 1, 1986. However, that proposal was supplemented by additional proposed changes to the barley standards which appeared in the November 20, 1986, **Federal Register** with comments to be submitted on or before December 22, 1986.

The Service will accept additional comments on all provisions of the October 2, 1986, proposal, as supplemented on November 20, 1986, during the comment period for this proposed rule. During the comment period for the October 2, 1986 proposal, the Service received requests for additional time to evaluate the October 2, 1986, proposed rule and submit comments. The Service also amends the October 2 proposal to change from May 1, 1987, to May 1, 1988, the proposed effective date for certificating to the nearest tenth percent dockage in barley, flaxseed, rye, sorghum, and triticale; foreign material in sunflower seed; and foreign material and fines in mixed grain. This will provide a longer period of time to accomplish any necessary marketing adjustments resulting from this proposed change.

Proposed Standards Changes

The corn standards should be revised to define the individual components of the factor "Broken corn and foreign material," commonly referred to as BCFM. Likewise, the sorghum standards should be revised to define the individual components of the factor "Broken kernels, foreign material, and other grains," commonly referred to as BNFM. The Service proposes to define the individual components of BCFM in corn and BNFM in sorghum. The original factors, BCFM and BNFM, will remain grade determining factors under the Official U.S. Standards for Grain. The individual components making up BCFM in corn and BNFM in sorghum would be determined separately during the grading process and the results placed on the inspection log for export shipments and in the "Remarks" section of the official inspection certificate for nonexport inspections. Reporting the individual component results on the inspection certificate promotes an awareness in the domestic marketplace as to how much foreign material is included in the BCFM for corn and BNFM for sorghum. This will permit the market to factor in the actual amount of foreign material when establishing pricing and quality requirements. Further, recording such information on the export inspection log and nonexport inspection certificate will allow the Service to develop a database for analyzing whether separate grade limits should be established for broken corn/kernels and foreign material in corn and sorghum.

Broken Corn and Foreign Material

The proposed U.S. Standards for Corn (51 FR 35224) would define BCFM in § 810.402 as "all matter that passes readily through a $^{12}/_{64}$-inch round-hole sieve and all matter other than corn that remains in the sieved sample after sieving according to procedures

prescribed in FGIS Instructions." This proposed definition is substantially the same as the current definition that appears in § 810.351(g). In most instances, BCFM is primarily small kernels, broken corn, and fine dust (starch). Non-corn material, such as weed seeds and pieces of cob, constitutes a smaller portion of the BCFM. Since corn and pieces of corn generally have a higher intrinsic value than foreign material, separation of these fractions has been the subject of past studies.

The most comprehensive study to date on separating broken corn and foreign material was performed by the Department of Agricultural Economics, University of Illinois, at Urbana-Champaign in October 1981. The study (AE–4521) entitled "Redefining the Grade Factor of Broken Corn and Foreign Material" concluded that the maximum number of chemical and physical differences between "corn" and "foreign material" could be obtained using either an 5/64- or 6/64-inch sieve. Although differentiation is not equally successful for all chemical and physical properties, most starch dust and weed seeds would be separated from corn using one of these sieves.

Use of a 12/64- and 5/64-inch round-hole sieves to separate broken corn and foreign material was addressed in the Grain Quality Workshops report entitled "Commitment to Quality." The Workshops were initiated by the grain trade in 1986 to study problems related to the quality of grain exported from the United States. Workshop members included representatives of producer associations, trade associations and commissions, grain marketing firms, universities, and USDA. Several workshop members recommended using an 5/64-inch sieve because the material removed by it would be marketable and because many elevators already have this sieve on hand for cleaning soybeans.

The Service proposes that two distinct definitions, one for broken corn and one for foreign material be included in § 810.402 of the U.S. Standards for Corn. The separation procedure would retain the 12/64-inch round-hole sieve in the top sieve carriage of the Carter Dockage Tester. An 5/64-inch round-hole sieve would be added in the bottom sieve carriage. Broken corn would be all matter passing through the 12/64-inch sieve and over the 5/64-inch sieve. Foreign material would be all matter passing through the 5/64-inch sieve and all matter other than corn which remains on top of the 12/64-inch sieve. The Service also solicits comments on using a 5/64-inch round-hole sieve rather than the 5/64-inch sieve. The 6/64 sieve would remove less material, defined as foreign material, which would be offset by a proportional increase in broken corn.

Broken Kernels, Foreign Material, and Other Grains

The proposed U.S. Standards for Sorghum (51 FR 35224) define BNFM in § 810.1402, Broken Kernels, Foreign Material, and Other Grains in Sorghum, as "all matter other than dockage that passes through a 5/64 triangular-hole sieve after sieving according to procedures prescribed in FGIS Instructions and all matter other than sorghum that remains in the sieved sample." This proposed definition is substantially the same as the current definition that appears in § 800.552(a) and applicable FGIS instructions. Although separation of broken kernels and foreign material, along with grade limits for each factor, was proposed in the Workshop report entitled "Commitment to Quality," separation procedures have not been extensively studied.

Under current procedures in the Service's instructions, BNFM is determined by a two-step procedure. The sample is first sieved using a 5/64-inch triangular-hole sieve in the top carriage and a number 6 riddle in the riddle carriage of a Carter Dockage Tester. A 25/64-inch round-hole sieve is placed in the bottom sieve carriage to remove dockage. Matter which passes over the riddle, except clumps of sorghum and threshed and unthreshed sorghum, and matter which passes through the 5/64-inch sieve and over the 25/64-inch sieve is BNFM. Matter passing through the 25/64-inch sieve is dockage. After removal of dockage and machine separated BNFM, a 30-gram portion of the work sample is handpicked for foreign material and other grains. The percentage of machine separated BNFM is calculated on the dockage-free sample. The percentage of handpicked foreign material and other grains is added to the percentage of machine separated BNFM to obtain the total percentage of BNFM.

The Service proposes that two distinct definitions, one for broken kernels and one for foreign material, be included in § 810.1402 of the U.S. Standards for Sorghum. Broken kernels in sorghum would be defined as all matter which passes through the 5/64-inch triangular-hole sieve and over the 25/64-inch round-hole sieve. Foreign material, which will include other grains, would be defined as all matter other than sorghum which passes over the number 6 riddle, and all matter other than sorghum which remains on top of the 5/64-inch triangular-hole sieve.

The Service is conducting a study to determine whether the material currently considered as dockage in sorghum should be redefined as foreign material. Based on the study results, the Service may propose to redefine foreign material in sorghum to include dockage, effective May 1, 1988.

General Prohibition

The GQIA amends the USGSA to prohibit the recombining or adding of dockage and foreign material to grain. The GQIA states that (1) "no dockage or foreign material, as defined by the Secretary, once removed from grain shall be recombined with any grain" and (2) "no dockage or foreign material of any origin may be added to any grain." This prohibition becomes effective on May 1, 1987. However, during an 8-month period, May 1 through December 31, 1987, persons operating an export loading facility may recombine dockage and foreign material with grain provided such recombination occurs during the loading of a cargo with the intended purpose of ensuring uniformity of dockage or foreign material in the cargo. Under no circumstances, however, may dust be recombined at such export loading facilities. For purposes of these proposed regulations, the term "export loading facility" is deemed to be identical to the USGSA definition for an export elevator at an export port location.

In enacting the GQIA, one of the principal aims of Congress was to prohibit the recombination or addition of dust at export loading facilities. In order to implement this prohibition it is proposed in a new section 800.61 to amend the definitions of dockage and foreign material to include dust but only as those definitions in this new section apply to export loading facilities (export elevators at export port locations). For the purpose of the general prohibition at export loading facilities, the Service proposes to define dockage and foreign material as set forth in 7 CFR Part 810, U.S. Official Standards for Grain, and, in addition, would add to the Part 810 definitions dust removed or separated from grain by any means, including a dust collection system or the natural process of settling on floors, equipment, and other areas. Once dust is separated or removed from grain at an export elevator, regardless of the method of removal, no person shall recombine or add the dust to grain. At other than export elevators at export port locations, the definitions for dockage

and foreign material would be as set forth in 7 CFR Part 810 proposed October 2 and November 20, 1986.

Exemption

The GQIA authorizes the Secretary to exempt the last handling of grain in the final sale and shipment of such grain to a domestic user or processor from the prohibition against the addition or recombination of dockage and foreign material. The Service proposes to grant such an exemption only upon the requests submitted through the affected domestic processor or user. Grain handlers seeking an exemption would be required to contact their customers and request that the domestic processor or user submit the application for an exemption to the Service on behalf of the grain handler.

If grain is sold and shipped under an exemption to a domestic end-user or processor, neither the grain nor any product or byproduct (excluding vegetable oils used as dust suppressants) derived from the grain would be permitted reentry into the commercial grain marketing channels. Vegetable oils may reenter the market and be added to grain as a dust suppressant.

Grain Additives

The GQIA does not prohibit (1) the treatment of grain to control insects or fungi, (2) the addition of a grain dust suppressant, or (3) the identification of grain using confetti or similar material. As provided in §§ 800.88(d) and 800.96(c), the proposal would establish provisions specifying that grain handlers and their agents are responsible for using and applying additives in accordance with the Food and Drug Administration regulations, Environmental Protection Agency regulations, and any other applicable laws. The regulations define additives in § 800.0(b) of the regulations. Specific requirements regarding the application of additives to grain that will be officially inspected or weighed are included under §§ 800.88 and 800.96 of the regulations.

Grain Blending

The GQIA permits the blending of grain with similar grain of a different quality to adjust the quality of the resulting mixture. The GQIA also permits the blending of broken corn with corn, and broken kernels with the type of grain from which the broken kernels were derived. To implement these provisions, the Service proposes that the same kind of grain, as defined under the Official U.S. Standards for Grain, may be blended to adjust quality. Blending broken kernels to whole kernels of the same kind of grain is also permitted. Blending different kinds of grain whether whole or broken kernels would be prohibited. Finally, the blending of broken corn or kernels that includes foreign material or dockage would be prohibited.

October 2, 1986, Proposed Rule

Some comments received concerning the October 2, 1986, (51 FR 35224) proposed changes to the Official U.S. Standards for Grain requested that the Service provide additional time for comments. The fall harvest and heavy market activity affected the ability of interested persons to evaluate the proposed changes and submit their comments by December 1, 1986. Consequently, the Service is reopening and will accept additional comments on the October 2 proposal as supplemented by the November 20, 1986, (51 FR 41971) proposal during the comment period for this proposed rule. Further, the Service amends the October 2 proposal to change from May 1, 1987, to May 1, 1988, the effective date for certificating to the nearest tenth percent dockage in barley, flaxseed, rye, sorghum, and triticale; foreign material in sunflower seed; and foreign material and fines in mixed grain. The May 1, 1988, effective date, if adopted final, will provide the grain industry with additional time to accomplish any necessary marketing adjustments. To aid and promote this adjustment process, as well as enable the Service to gather information, the Service proposes to record the above factor results to the nearest tenth of a percent in the "Remarks" section of each nonexport inspection certificate between May 1, 1987, and May 1, 1988. Similar information for export shipments will continue to be recorded on the export inspection log.

Comments including data, views, and arguments are solicited from interested persons. Pursuant to section 4(b) of the USGSA (7 U.S.C. 75(b)), upon request, such information concerning changes to the standards may be orally presented in an informal manner. Also, pursuant to section 4(b) of the USGSA, no standards established or amendments or revocations of standards are to become effective less than 1 calendar year after promulgation unless, in the judgment of the Administrator, the public health, interest, or safety require that they become effective sooner. If adopted, the Service intends that, as previously discussed, some changes should become effective on May 1, 1987 and others on May 1, 1988.

List of Subjects in 7 CFR Parts 800 and 810

Administrative practice and procedure, Grain, Exports.

PART 800—[AMENDED]

For the reasons set out in the preamble, 7 CFR Part 800 is proposed to be amended as follows:

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub.L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

2. The undesignated heading preceding § 800.60, "Deceptive Practices," is revised to read "Grain Handling Practices."

3. Section 800.61 is added under the heading "Grain Handling Practices" to read as follows:

§ 800.61 Prohibited grain handling practices

(a) *Definitions.* For the purpose of this section, dockage and foreign material in grain shall be—

(1) Defined for export elevators at export port locations as set forth in 7 CFR Part 810 and as dust removed or separated from grain by a dust collection system or by the natural process of dust settling on floors, equipment, and other areas; and

(2) Defined for other than export elevators as set forth in 7 CFR Part 810.

(b) *Prohibited practices.* Except as permitted in paragraphs (c) and (d) of this section, no person shall—

(1) Recombine or add dockage or foreign material to any grain;

(2) Blend different kinds of grain; or

(3) Add broken corn or broken kernels of one grain to a different kind of grain.

(c) *Exemption.* (1) The Administrator may grant exemptions from paragraph (b) of this section for grain shipments sent directly to a domestic end-user or processor. Requests for exemptions shall be submitted by grain handlers to the Service through the domestic end-users or processors or their representatives.

(2) Grain sold under an exemption shall be consumed or processed into a product(s) by the purchaser and not resold into the grain market.

(3) Products or byproducts from grain sold under an exemption shall not be blended with or added to grain in commercial channels, except for vegetable oil which may be used as a dust suppressant in accordance with (d)(4) of this section.

(d) *Exceptions.* Paragraph (b) of this section shall not be construed as prohibiting the following grain handling practices. Compliance with paragraphs

(d)(1) through (d)(6) of this section does not excuse compliance with applicable Federal, State, and local laws.

(1) *Blending.* Grain, of the same kind, as defined by the U.S. Standards for Grain, may be blended to adjust quality. Broken corn or broken kernels, free of foreign material and dockage, may be recombined or added to whole grain of the same kind.

(2) *Insect and fungi control.* Grain may be treated to control insects and fungi. Elevators, other grain handlers, and their agents are responsible for the insecticides and fungicides proper usage and application. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected and weighed.

(3) *Marketing dockage and foreign material.* Dockage and foreign material may be marketed separately, in pelletized form, or as a processed ration for livestock, poultry, or fish.

(4) *Dust suppressants.* Grain may be treated to suppress dust during handling. Elevators, other grain handlers, and their agents are responsible for the dust suppressants proper usage and application. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected and weighed.

(5) *Identification.* Confetti or similar material may be added to grain for identification purposes. Elevators, other grain handlers, and their agents are responsible for such materials proper usuage and application. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected or weighed.

(6) *Export loading facilities.* Between May 1, 1987, and December 31, 1987, export elevators at export port locations may recombine dockage and foreign material, but not dust, with grain provided such recombination occurs during the loading of a vessel with the intended purpose of ensuring uniformity of dockage and foreign material in the cargo.

4. Section 800.162 is amended by redesignating paragraph (b) as (c); adding new paragraphs (b) and (d); and revising paragraph (c) to read as follows:

§ 800.162 Certification of grade; special requirements.

* * * * *

(b) *Corn and sorghum.* Each official certificate for grade representing nonexport inspections of corn and sorghum shall show, in addition to the requirements of paragraphs (a), (c), and (d) of this section, the percent of foreign material and broken corn in corn and the percent of foreign material and broken kernels in sorghum. These results will be placed in the "Remarks" section of the official certificate.

(c) *Cargo shipments.* Each official certificate for grade representing a cargo shipment shall show, in addition to the requirements of paragraphs (a), (b), and (d) of this section, the results of all official factors defined in the Official U.S. Standards for Grain for the type of grain being inspected.

(d) *Dockage and foreign material.* For other than export inspections, dockage in barley, flaxseed, rye, sorghum, and triticale; foreign material in sunflower seed; and foreign material and fines in mixed grain shall be shown to the nearest tenth of a percent in the "Remarks" section of the official inspection certificate. This requirement applies until May 1, 1988.

PART 810—[AMENDED]

For reasons set out in the preamble, it is proposed that 7 CFR Part 810, Subparts C and H, as proposed at 51 FR 35224 be further amended as follows:

1. The authority citation for Part 810 continues to read as follows:

Authority: Sections 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

2. Under Subpart C—U.S. Standards for Corn, § 810.402 is amended by redesignating paragraph (b) and (c) as (c) and (d); (d) and (e) as (f) and (g); adding new paragraphs (b) and (e); and revising paragraph (g) to read as follows:

§ 810.402 Definition of other terms.

* * * * *

(b) *Broken corn.* All matter that passes readily through a 12/64 round-hole sieve and over an 8/64 round-hole sieve according to procedures prescribed in FGIS Instructions.

* * * * *

(e) *Foreign material.* All matter that passes readily through a 8/64 round-hole sieve and all matter other than corn that remains on top of the 12/64 round-hole sieve according to procedures prescribed in FGIS Instructions.

* * * * *

(g) *Sieves*—(1) *12/64 round-hole sieve.* A metal sieve 0.032 inch thick with round perforations 0.1875 (12/64) inch in diameter which are ¼ inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

(2) *8/64 round-hole sieve.* A metal sieve 0.032 inch thick with round perforations 0.1250 (8/64) inch in diameter which are 3/16 inch from center to center. The perforations of each row shall be staggered in relation to the adjacent row.

3. Under Subpart H—U.S. Standards for Sorghum, § 810.1402 is amended by redesignating paragraphs (a) through (d) as (b) through (e), and paragraphs (e) through (i) as (g) through (k); and adding new paragraphs (a) and (f) to read as follows:

§ 810.1402 Definition of other terms.

(a) *Broken kernels.* All matter which passes through a 5/64 triangular-hole sieve and over a 2-1/2/64 round-hole sieve according to procedures prescribed in FGIS Instructions.

* * * * *

(f) *Foreign material.* All matter, except sorghum, which passes over the number 6 riddle and all matter other than sorghum that remains on top of the 5/64 triangular-hole sieve according to procedures prescribed in FGIS Instructions.

* * * * *

Dated: February 26, 1987.

W. Kirk Miller,

Administrator.

[FR Doc. 87-5255 Filed 3-12-87; 8:45 am]

BILLING CODE 3410-EN-M

Agricultural Marketing Service

7 CFR Part 908

Valencia Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary of the 1986-87 marketing policy for Valencia oranges grown in Arizona and a designated part of California. The marketing policy was submitted by the Valencia Orange Administrative Committee, which functions under the marketing order covering California-Arizona Valencia oranges, The marketing policy contains information on crop and market prospects for the 1986-87 season.

DATE: Written suggestions, views, or pertinent information relating to the marketing of the 1986-87 California-Arizona Valencia orange crop will be considered if received by March 23, 1987.

ADDRESS: Interested persons are invited to submit written comments concerning this notice. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250. Comments should reference the

date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250; telephone: (202) 447–5697. Growers and handlers of Valencia Oranges may obtain a copy of the marketing policy directly from the Valencia Orange Administrative Committee. Copies of the marketing policy are also available for Mr. Cioffi.

SUPPLEMENTARY INFORMATION: Pursuant to § 908.50 of the marketing order covering Valencia oranges grown in Arizona and a designated part of California, the Valencia Orange Administrative Committee, hereinafter referred to as the "committee," is required to submit a marketing policy to the Secretary prior to recommending regulations for the ensuing season. The order authorizes volume and size regulations applicable to fresh shipments of Valencia oranges to domestic markets, including Canada. Export shipments of oranges and oranges utilized in the production of processed orange products are not regulated under the order.

The committee has adopted its marketing policy for the 1986–87 marketing season. The marketing policy is intended to inform the Secretary and persons in the industry of the committee's plans for recommending regulation of shipments during the marketing season and the basis therefor. The committee evaluates prospective market conditions and recommends to the Secretary an estimate of the quantity of Valencia oranges that can be shipped each week to domestic outlets without disrupting markets. However, during the season each weekly recommendation may vary from this schedule depending on prevailing market conditions. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In its 1986–87 marketing policy, the committee projects the 1986–87 California-Arizona Valencia orange crop at 59,000 cars (1 car=1,000 cartons of 37½ pounds net weight each). This compares with last year's production of 45,700 cars. The current forecast places the crop above the most recent five year average crop size of 49,700 cars. In district 1, Central California, 1986–87 production is estimated at 25,400 cars compared to 18,900 cars produced in 1985–86. In District 2, Southern California, the crop is expected to be 29,800 cars compared to 23,200 cars produced last year. In District 3, the Arizona-California desert valley, the committee estimates a production of 3,800 cars compared to 3,500 cars in 1985–86.

It is possible that the estimated crop forecast of total production could be overstated and adjustments in such estimates may be necessary in ensuing weeks, since crop loss and fruit damage may have occurred in the production area from recent freezing temperatures. However, at this time it is believed that crop loss and/or damage will be minimal. It is expected that orange sizes in all districts will be smaller than the average size in 1985–86. Fruit quality shipped to domestic markets is expected to be excellent.

The committee estimates that shipments to domestic fresh market outlets, including Canada, will account for 22,000 cars. Last year a total of 24,650 cars were shipped to domestic markets. Fresh export shipments are expected to total 12,000 cars compared to 11,900 cars last year. Processing and other disposition is forecast at 25,000 cars compared to 9,100 cars last year.

Limited shipments of Valencia oranges began the last week in January. Based on current projections, shipments are expected to finish in early November. The committee has developed a schedule of estimated weekly shipments during the 1986–87 season.

The committee reports that the Florida round orange production is expected to be 258,000 cars, consisting of 144,000 cars of the early mid-season type oranges and 114,000 cars of Valencia oranges. Total Florida round orange production is expected to be 8 percent greater than last year. In Texas, following severe freeze damage in 1983, orange production for the 1986–87 season is expected to be 1,700 cars. Production of apples is estimated at 184.2 million bushels in 1986–87 compared to 191.4 million bushels in 1985–86. Winter pear production is estimated at 9.2 million bushels in 1986–87 compared to 8.4 million bushels last year. Additionally, significant competition from summer fruits is expected. General economic conditions are expected to be favorable.

The 1985–86 season average fresh equivalent on-tree grower returns for California-Arizona Valencia oranges as reported by the National Agricultural Statistics Service were $2.66 per carton. This was about 43 percent of the equivalent season average parity of $6.14 per carton. The 1986–87 parity is projected to be $6.05 per carton. The Agricultural Marketing Service is currently evaluating the 1986–87 price outlook and will use the results of this evaluation in reviewing the committee's marketing policy.

In order to provide for public input, the Department will accept written views and information pertinent to the proposed marketing policy and the need for, or level of, regulation for the 1986–87 season.

Publication of this summary of the marketing policy does not create any legal obligations or rights, either substantive or procedural.

List of Subjects in 7 CFR Part 908

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

1. The Authority citation for 7 CFR Part 908 continues to read as follows:

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

Dated: March 6, 1987.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 87–5411 Filed 3–12–87 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 86–099]

Amendment To Declare Fiji Free of VVND, Hog Cholera, and Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations on importation of animals and animal products by adding Fiji to the lists of countries declared free of viscerotropic velgenic Newcastle disease (VVND), hog cholera, and swine vesicular disease. Our proposed action would relieve restrictions on the importation of swine; pork and pork products; and carcasses, parts, and products (including certain eggs) of poultry and birds from Fiji into the United States.

DATE: We will consider written comments if we receive them on or before May 12, 1987.

ADDRESSES: Send your comments to Steven R. Poore, Acting Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that they refer to Docket Number 86–099. Comments we receive may be inspected

at Room 728 or the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R. D. Whiting, Chief Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 prohibit or restrict the importation of certain animals and animal products from specified countries to prevent the introduction of various diseases, including viscerotropic velogenic Newcastle disease (VVND), hog cholera, and swine vesicular disease into the United States.

Section 94.6 of the regulations restricts the importation of carcasses, parts, and products (including certain eggs) of poultry and birds into the United States from countries where VVND exists. The restrictions include requirements that the carcasses or products be cooked or treated to destroy organisms that could cause VVND. Paragraph (a) of this section lists the countries declared free of VVND.

Section 94.9 of the regulations restricts the importation of pork and pork products into the United States from countries where hog cholera exists. The restrictions include requirements that the pork or pork products be cooked, cured, dried, or otherwise treated to destroy organisms that could cause hog cholera. Paragraph (a) of this section lists the countries declared free of hog cholera.

Sections 94.10 and 94.14 of the regulations prohibit the importation of swine into the United States from countries where hog cholera or swine vesicular disease exists. Section 94.10 repeats the list of countries declared free of hog cholera.

Section 94.12 of the regulations restricts the importation of pork and pork products into the United States from countries where swine vesicular disease exists. The restrictions include requirements that the pork or pork products be cooked, cured, dried, or otherwise treated to destroy organisms that could cause swine vesicular disease. Paragraph (a) of this section lists the countries declared free of swine vesicular disease.

In response to a request from Fiji, we are proposing to add Fiji to the lists of countries declared free of VVND, hog cholera, and swine vesicular disease. Fiji has had no case of VVND for at least 3 years and no case of hog cholera or swine vesicular disease for at least 1 year. Evidence suggests that these diseases have never existed in Fiji. Furthermore, Fiji has a field force of veterinarians and assistants that appears adequate to monitor poultry for VVND and to monitor swine for hog cholera and swine vesicular disease. If an outbreak of any of these diseases were suspected, samples would be taken from the suspect poultry or swine and sent for testing and diagnosis to a laboratory in New Zealand (for VVND or hog cholera) or Pierbright, England (for swine vesicular disease).

Adding Fiji to the list of countries declared free of VVND would exempt carcasses, parts, and products (including certain eggs) of poultry and birds from Fiji from the requirements in § 94.6. Adding Fiji to the lists of countries declared free of hog cholera and swine vesicular disease would permit Fiji to export swine into the United States and would exempt pork and pork products from Fiji from the requirements in §§ 94.9 and 94.12.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Fiji does not now export any pork or pork products or carcasses, parts, or products (including eggs) of poultry or birds into the United States. And, because Fiji's pork and poultry industries are very small, it is unlikely that Fiji would export pork or poultry products into the United States if this proposal is adopted. Our proposal would remove the prohibition on importing swine from Fiji into the United States; however, because Fiji has a small swine population, it is unlikely that Fiji would export swine into the United States if this proposal is adopted. Any swine that might be imported from Fiji into the United States would be subject to the regulations in 9 CFR Part 92, which include requirements that swine from any part of the world except Canada be quarantined for at least 15 days upon arrival in the United States and, during the quarantine, be subjected to any inspections, disinfections, and tests necessary to determine the animals' freedom from disease.

Under these circumstances, the administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act.

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 9 CFR Part 94

African swine fever, Animal diseases, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, and Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 would be amended to read as follows:

1. The authority citation for Part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.6 [Amended]

2. In § 94.6, paragraph (a)(2) would be amended by adding "Fiji," after "Denmark,".

§ 94.9 [Amended]

3. In § 94.9, paragraph (a) would be amended by adding "Fiji," after "Dominican Republic," both times "Dominican Republic," appears.

§94.10 [Amended]

4. Section 94.10 would be amended by adding "Fiji," after "Dominican Republic,".

§94.12 [Amended]

5. In § 94.12, paragraph (a) would be amended by adding "Fiji," after "Dominican Republic,".

Done in Washington, DC, this 10th day of March, 1987.

B. G. Johnson,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-5410 Filed 3-12-87 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 55

Operators' Licenses and Conforming Amendments; Public Meetings

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Public meetings.

SUMMARY: To provide information about the final revisions to 10 CFR Parts 50 and 55, "Operators' Licenses," to be published shortly, and their implementation, the Nuclear Regulatory Commission is holding a series of four public meetings. The proposed revisions were published November 26, 1984 (49 FR 46428).

DATES: April 9, 14, 16, and 20, 1987.

ADDRESSES: Meetings will be held in Atlanta, Georgia, Denver, Colorado, Rosemont, Illinois, and King of Prussia, Pennsylvania. See **"SUPPLEMENTARY INFORMATION"** for details.

FOR FURTHER INFORMATION CONTACT: Chief, Operator Licensing Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-4868.

SUPPLEMENTARY INFORMATION: Dates and Locations of Meetings:

A. April 9, 1987 for Region II, Richard B. Russell Federal Building, Strom Auditorium, Lower Level, 75 Spring Street, SW., Atlanta, Georgia. Point of Contact:

Mr. Kenneth E. Brockman, US Nuclear Regulatory Commission, Region II, 101 Marietta Street, Suite 3100, Atlanta, GA 30323, (404) 331-5594.

B. April 14, 1987 for Regions IV and V, Stouffer Concourse Hotel, 3801 Quebec Street, Denver, Colorado. Point of Contacts:

Mr. Ralph A. Cooley, US Nuclear Regulatory Commission, Region IV, Parkway Central Plaza Building, 611 Ryan Plaza Drive, Suite 1000, Arlington, TX 76011, (817) 860-8147

Mr. Phillip Morrill, US Nuclear Regulatory Commission, Region V, 1450 Maria Lane, Suite 210, Walnut Creek, CA 94596, (415) 943-3740

C. April 16, 1987 for Region III, Ramada Hotel O'Hare, 6600 N. Mannheim Road, Rosemont, Illinois. Point of Contact:

Mr. Thomas Burdick, US Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, IL 60137, (312) 790-5566

D. April 20, 1987 for Region I, Hilton Hotel Valley Forge, 251 West DeKalb Pike, King of Prussia, Pennsylvania. Point of Contact:

Mr. Noel F. Dudley, US Nuclear Regulatory Commission, Region I, 631 Park Avenue, King of Prussia, PA 19406, (215) 337-5211

Dated at Washington, DC this 9th day of March, 1987.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Deputy Director, Division of Human Factors Technology, Office of Nuclear Reactor Regulation.

[FR Doc. 87-5351 Filed 3-12-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 571

[No. 87-240]

Accounting Policy Relating to Acquisition, Development and Construction Loans

Dated: March 4, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; clarification.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing to amend its statement of accounting policy relating to acquisition, development and construction ("ADC") loans used by all institutions the accounts of which are insured by the FSLIC ("insured institutions") or affiliates thereof when preparing reports or financial statements for filing with the Board or the FSLIC. The amendments relate to the recent "Notice to Practitioners" issued by the American Institute of Certified Public Accountants ("AICPA"), which superseded two prior notices issued in November 1983 and November 1984, and to the public position regarding the effective date of the recent notice taken by the Chief Accountant of the Securities and Exchange Commission ("SEC"). By proposing this amendment to its statement of policy, the Board is adhering to its policy that insured institutions are expected to apply the guidance of the accounting profession for determining whether a transaction characterized as an ADC loan is in fact a loan or whether, in substance, it is a real estate investment or a joint venture.

DATE: Comments must be received on or before May 12, 1987.

ADDRESS: Send comments to Director Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: M. Christian Mitchell, Professional Accounting Fellow, Office of Regulatory Policy, Oversight, and Supervision, (202) 778-2535, or Robert S. Schwartz, Attorney, Regulations and Legislation Division, Office of General Counsel, (202) 377-6567, Federal Home Loan Bank Board,1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: By Board Resolution No. 85-291, 50 FR 18233 (April 30, 1985) (codified at 12 CFR 571.17), the Board on April 18, 1985, adopted a statement of policy concerning regulatory accounting for certain real estate activities. The Board issued the policy statement in response to increased ADC activity by insured institutions in an environment that some perceived to lack authoritative accounting guidance. The Board and the accounting profession found that accounting for ADC arrangements varied in practice. In response, the AICPA's Accounting Standards Executive Committee ("AcSEC"), in November 1983, and the Savings and Loan Committee, in November 1984, issued two notices to practitioners addressing ADC arrangements. Professional Notes, *Guidance on Accounting for Real Estate Acquisition, Development or Construction Loans: Enhancing the Accounting Manual,* Journal of Accountancy, Nov. 1983, at 51; *Notice to Practitioners on ADC Loans,* C.P.A. Letter, Nov. 26, 1984, at 3. The first notice specifies certain characteristics that generally exist in real estate activities that may be classified as loans in contrast to those that should be classified as investments or joint ventures. The second notice deals primarily with the "personal guarantee" issue present in some ADC

arrangements and indicates secondarily that the first notice applies to purchased participations in ADC arrangements, highlighting the fact that some profit participation arrangements may be oral rather than written.

While the Board thought the guidance provided by the AICPA to be helpful, it was concerned that because AICPA notices to practitioners are not considered a primary accounting source some institutions would not feel required to follow them. The resulting lack of standardization and failure of some institutions to apply appropriate accounting principles to these transactions led to confusion and created obstacles in the monitoring and examination techniques employed by the Board to promote the safety and soundness of insured institutions. The Board therefore adopted the first two notices to practitioners as its accounting policy in this area "to put into regulatory format the accounting guidance that had been developed by the accounting profession and to state that there was *no substantive difference* between the Board's regulatory treatment and GAAP [generally accepted accounting principles]." 50 FR at 18235 (emphasis in original).

As a result of continuing practice problems the AICPA's AcSEC issued in February 1986 a third notice to practitioners which superseded the two previous notices. *Notice to Practitioners on ADC Loans*, C.P.A. Letter, Feb. 10, 1986, at 3. This third notice is intended to clarify the two previous notices by expanding upon the guidance provided in them. In keeping with its policy relative to ADC arrangements, the Board is proposing to adopt the third notice to practitioners as its accounting policy in this area.

The third notice clarifies that its guidance is applicable only to arrangements in which the lender participates in expected residual profits, or "equity kickers." This has been the view of most practitioners of the first two notices. It recommends that ADC arrangements with equity kickers over 50 percent be treated as direct investments. The notice requires that ADC arrangements accounted for as investments or joint ventures be combined and reported separately in the balance sheet from those ADC arrangements accounted for as loans. The notice does not address, as a separate issue, 100 percent lending.

The notice provides auditing guidance, particularly with respect to equity investment and personal guarantees by the borrower. Additionally, the notice indicates that personal guarantees rarely provide a sufficient basis for concluding that an ADC arrangement should be accounted for as a loan. "Sweat equity"—value, not funded by the lender, for the builder's effort after inception of an arrangement—is excluded as an item to be considered a substantial equity investment by the borrower.

On the matter of transition, the third notice provides that "[b]ecause practice and guidance on this matter have been the subject of debate and evolution over time, the guidance contained in this notice should be applied to ADC arrangements entered into after its issuance." However, it is the view of many practitioners, regulators, and accounting standard setters that such guidance does not constitute a new standard but, rather, clarifies standards which should have been applied based upon a proper reading of the first two notices. The Chief Accountant of the SEC, Clarence Sampson, expressed this view at the February 6, 1986, meeting of the Financial Accounting Standards Board's ("FASB's") Emerging Issues Task Force, as the following excerpt from the minutes of that meeting indicates: The SEC Observer indicated that he supported the profession's initiative to clarify guidance in this area. However, the SEC staff does not view the guidance in the Notice as prospective only. Rather, he believes a registrant and its independent auditor should evaluate existing and future arrangements in relation to the guidance in the Notice. In those situations in which application of the Notice to existing arrangements would result in a different classification of the ADC arrangement based on an analysis of the current facts and circumstances, the balance sheet in financial statements for periods ending *after* December 31, 1985 should reflect the accounting classification that results from application of the Notice. In those future periods (beginning January 1, 1986), income recognition on such arrangements should be based on the balance sheet classification. In addition, future balance sheet presentations should reflect the guidance in the Notice that ADC arrangements accounted for as investments in real estate or joint ventures should be reported separately from those ADC arrangements accounted for as loans. The SEC Observer also indicated that any errors made in the application of the two prior Notices should be corrected through restatement.

As a result of the position taken by the SEC staff, two practices have developed relative to transition and effective date of the notice. Therefore the board is seeking comment on the effective date and transition rule of its proposed amendments to its statement of policy.

Adoption of the third notice's effective date (February 10, 1986) and transition rule (prospective application only) would cause similar arrangements to be classified differently in the same balance sheet. The board is concerned that such policy could undermine its monitoring and examination functions. On the other hand, the effective date contained in the notice was established after due consideration by the accounting profession.

Adoption of the SEC staff's effective date (January 1, 1986) and transition rule (application to *existing* as well as future arrangements) would ensure that similar arrangements are classified consistently in all financial reports filed with the Board, regardless of the date such arrnagements were consummated. However, an effective date of January 1, 1986, could require the restatement of 1986 financial reports previously filed with the Board due to the effects on income statements from reclassifying arrangements. Some concern also has been expressed that reclassification of loans as direct investments could cause institutions to violate their grants of investment authority under federal or state law or the Board's direct investment rule, 12 CFR 563.9–8 (1986), or minimum regulatory capital rule, Board Res. No. 86–857, 51 FR 33565 (Sept. 22, 1986) (to be codified at 12 CFR 563.13).

A third alternative is the adoption of the SEC transition rule with an alternative effective date of no earlier than the first day of the calendar quarter in which any final amendment is published in the **Federal Register**. This would avoid the problem of restatement and resubmission of previously filed income statements while providing for consistency within balance sheets. While some reclassification will be necessary, the Board believes that concern about reclassification is exaggerated.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small institutions to which the proposed rule would apply.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association.

the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a) (1986). Therefore, small entities to which the proposed rule would apply are the 1,651 insured institutions that had assets totaling $100 million or less as of December 31, 1986.

3. *Impact of the proposed rule on small institutions.* The rule would impose no new recordkeeping requirements or other additional administrative burden on any insured institution. The Board therefore believes that the proposed rule would not have a significant economic impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above. The Board has specifically requested comments regarding the effective date and transition rule of the proposal.

List of Subjects in 12 CFR Part 571

Accounting, Bank deposit insurance, Savings and loan associations.

Accordingly, the Board hereby proposes to amend Part 571, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations,* as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 571—STATEMENTS OF POLICY

1. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Section 571.17 is revised to read as follows:

§ 571.17 Accounting for acquisition, development and construction loans.

(a) The accounting treatment described in this section for acquisition, development and construction ("ADC") loans that include expected residual profit is to be used by all insured institutions or affiliates thereof ("lenders") when preparing reports or financial statements for filing with the Board or the Corporation.

(b) Insured institutions, to the extent that they have independent legal authority to do so, may originate or purchase participations in ADC loans that may be structured as loans which have virtually the same risks and potential rewards as those of owners or joint venturers. Generally, in these transactions there is little or no borrower equity, and the institution recognizes loan fees, interest and/or profits which are funded entirely by loan proceeds. This statement of policy sets forth the policy and general criteria for determining whether transactions are real estate investments, joint ventures, or loans and specifies the accounting principles and procedures that shall be used to account for such transactions in reports to and financial statements filed with the board or the Corporation.

(c) ADC transactions are often structured so that the lender participates in the expected residual profit on the ultimate sale or use of the property. Expected residual profit is the amount of profit, whether called interest, fees, or another name, above a reasonable amount of interest and fees earned by the lender. Beyond the lender's participation in expected residual profits, such ADC loans usually have most of the following characteristics:

(1) The lender agrees to provide all or substantially all necessary funds to acquire, develop, or construct the property. The borrower has title to but little or no equity in the underlying property.

(2) The lender funds the commitment or origination fees or both by including them in the amount of the loan.

(3) The lender funds all or substantially all interest and fees during the term of the loan by adding them to the loan balance.

(4) The lender's only security is the ADC project. The lender has no recourse to other assets of the borower, and the borrower does not guarantee the debt. (See paragraph (e) of this section for a discussion of personal guarantees.)

(5) In order for the lender to recover the investment in the project, the property must be sold to independent third parties, the borrower must obtain refinancing from another source, or the property must be placed in service and generate sufficient net cash flow to service debt principal and interest.

(6) The arrangement is structured so that foreclosure during the project's development as a result of delinquency is unlikely because the borrower is not required to make any payments until the project is complete, and, therefore, the loan normally cannot become delinquent.

(d) Even though the lender participates in expected residual profit, the following characteristics suggest that the risks and rewards of an ADC arrangement are similar to those associated with a loan:

(1) The lender participates in less than a majority of the expected residual profit.

(2) The borrower has a substantial equity investment in the project not funded by the lender. The investment may be in the form of cash payments by the borrower or a contribution by the borrower of land (without considering value expected to be added by future development or construction), or other assets.

(3) The lender has recourse to substantial tangible, saleable assets of the borrower, with a determinable sales value, other than the ADC project that are not pledged as collateral under other loans, or an irrevocable letter of credit from a creditworthy, independent third party provided by the borrower to the lender for a substantial amount of the loan over the entire term of the loan.

(4) A take-out commitment for the full amount of the lender's loans has been obtained from a creditworthy, independent third party. If the take-out commitment is conditional, the conditions should be reasonable and their attainment probable.

(5) Noncancelable sales contracts or lease commitments from creditworthy, independent third parties are currently in effect that will provide sufficient net cash flow on completion of the project to service normal loan amortization (principal and interest). Any associated conditions should be probable of attainment.

(e)(1) While some arrangements include personal guarantees of the borrower and/or a third party, the existence of a personal guarantee alone rarely provides a sufficient basis for concluding that an ADC arrangement should be accounted for as a loan. If the substance of the guarantee and the ability of the guarantor to perform can be reliably measured, and the guarantee covers a substantial amount of the loan, concluding that an ADC arrangement supported by a personal guarantee should be accounted for as a loan may be justified.

(2) The substance of a personal guarantee depends on the ability of the guarantor to perform under the guarantee, the practicality of enforcing the guarantee in the applicable jurisdiction, and a demonstrated intent to enforce the guarantee.

(i) Examples of personal guarantees that the guarantor would have the ability to perform would include those supported by liquid assets placed in

escrow, pledged marketable securities, or irrevocable letters of credit in amounts sufficient to provide necessary equity support for an ADC arrangement to be considered a loan. In the absence of such support for the guarantee, the financial statements and other information of the guarantor may be considered to determine the guarantor's ability to perform. Due to the high-risk nature of many ADC arrangements, financial statements that are current and complete, that include appropriate disclosures, and that are reviewed or audited by independent certified public accountants can be considered in determining the value of such guarantees. Particular emphasis should be placed on the following factors when considering the financial statements of the guarantor:

(A) There should be evidence of sufficient liquidity to perform under the guarantee. There may be little substance to a personal guarantee if the guarantor's net worth consists primarily of assets pledged to secure other debt.

(B) If the financial statements do not disclose and quantify guarantees provided by the guarantor to other projects, inquiries should be made as to other guarantees.

(ii) The enforceability of the guarantee in the applicable jurisdiction should also be determined. Even if the guarantee is legally enforceable, business reasons that might preclude the lender from pursuing the guarantee should be assessed. Those business reasons could include the length of time required to enforce a personal guarantee, whether it is normal business practice in that jurisdiction to enforce guarantees on similar transactions, and whether the lender must choose between pursuing the guarantee or the project's assets because it cannot pursue both.

(f) Some ADC arrangements recognize value, not funded by the lender, for the builder's efforts after inception of the arrangement, which is sometimes referred to as "sweat equity." Because it does not place the borrower at risk, sweat equity should not be considered a substantial equity investment on the part of the borrower in determining whether the ADC arrangement should be treated as a loan.

(g) After identifying and considering all of the factors associated with an ADC arrangement, the following guidance should be followed:

(1) If the lender is expected to receive over 50 percent of the expected residual profit from the project, the lender should account for income or loss from the arrangement as a real estate investment, as specified by Statement of Financial Accounting Standards ("SFAS") No. 67, "Accounting for Costs and Initial Rental Operations of Real Estate Projets," and SFAS No. 66, "Accounting for Sales of Real Estate," unless other accounting is permitted by Board regulation.

(2) If the lender is expected to receive 50 percent or less of the expected residual profit, the entire arrangement should be accounted for either as a loan or a real estate joint venture, depending on the circumstances. At least one of the characteristics identified in paragraphs (d)(2) through (5) of this section or a qualifying personal guarantee should be present for the arrangement to be accounted for as a loan. Otherwise, real estate joint venture accounting would be appropriate.

(i) In the case of a loan, interest and fees may be appropriately recognized as income subject to recoverability.

(ii) In the case of a real estate joint venture, the provisions of Statement of Position ("SOP") No. 78-9, "Accounting for Investments in Real Estate Ventures," and SFAS No. 34, "Capitalization of Interest Cost," as amended by SFAS No. 58, "Capitalization of Interest Cost in Financial Statements That Include Investments Accounted for by the Equity Method," provide guidance for such accounting. In particular, paragraph 34 of SOP No. 78-9 provides guidance on circumstances under which interest income should not be recognized.

(3) ADC arrangements accounted for as investments in real estate or joint ventures should be combined and reported in the balance sheet separately from ADC arrangements accounted for as loans.

(4) If material, ADC arrangements accounted for as loans should be reported in the footnotes separately.

(5) If transactions have occurred in which the lender's share of the expected residual profit in a project is sold to the borrower or a third party for cash or other consideration:

(i) The proceeds from the sale of the expected residual profit in an ADC arrangement accounted for as a loan should be recognized prospectively as additional interest over the remaining term of the loan. The expected residual profit is considered additional compensation to the lender, and the sale results in a quantification of the profit.

(ii) Gain recognition, if any, from the sale of the expected residual profit in an ADC arrangement accounted for as an investment in real estate or joint venture is appropriate only if the criteria of SFAS No. 66 are met after giving consideration to the entire ADC arrangement, including the continuing relationship between the lender and the project.

(6) If the lender was the seller of the property at the initiation of the project, gain recognition, if any, should be determined by reference to SFAS No. 66 unless other accounting is permitted by Board regulation.

(7) The accounting treatment for an ADC arrangement should be periodically reassessed because the factors that were evaluated in determining the accounting treatment at inception subsequently change for some ADC arrangements—for example, as a result of the renegotiation of the terms. An ADC arrangement originally classified as an investment or joint venture could subsequently be treated as a loan if the risk to the lender diminished significantly and the lender will not be receiving over 50 percent of the expected residual profit in the project. The lender must demonstrate a change in the facts relied upon when initially making the accounting decision, not just the absence of, or reduced participation in, the expected residual profit. For instance, risk may be reduced if a valid take-out commitment from another lender which has the capability to perform under the commitment is obtained and all conditions affecting the take-out have been met, thus assuring the primary lender recovery of its funds. If, on the other hand, the lender assumes further risks and/or rewards in an ADC arrangement by, for example, releasing collateral supporting a guarantee and/or increasing its precentage of profit participation to over 50 percent, the lender's position may change to that of an investor in real estate. Neither an improvement in the economic prospects for the project or successful, on-going development of the project nor a deterioration in the economic prospects for the project justifies a change in classification of an ADC arrangement. A change in classification is expected to occur infrequently and should be supported by appropriate documentation. The change in factors in an ADC arrangement should be evaluated based on the guidance of this section and accounted for prospectively.

(8) If an ADC arrangment accounted for as a real estate joint venture continues into a permanent phase with the project generating a positive cash flow and paying debt service currently, income should be recognized in accordance with SOP No. 78-9.

(9) Regardless of the accounting treatment for an ADC arrangement, management has a continuing responsibility to review the collectibility of uncollected principal, accrued

interest, and fees and to provide for appropriate allowances. The lender's loan and accrued interest, real estate investment, or joint venture investment is subject to recoverability under the market-value concept discussed in the Board's staff memorandum R41c, "Appraisal Policies and Practices of Insured Institutions and Service Corporations."

(10) Many participations in loans or whole loans are bought and sold by other parties. The lender's accounting treatment for a purchase that involves ADC arrangements should be based on a review of the transaction at the time of purchase in accordance with the guidance of this section. In applying this guidance, the institution should look to its individual percentage of the expected residual profit. For example, a participating lender that will not share in any of the expected residual profit is not subject to this section. The responsibility to review collectibility and provide allowances, however, applies equally to purchased ADC arrangements. The lender should view in their entirety any reciprocal transactions between itself and third parties, including multiparty transactions, and should account for such transactions in accordance with their combined effects.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-5415 Filed 3-12-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-255 (Colorado-38 Addition)]

High Cost Gas Produced From Tight Formation, Colorado; Notice of Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978, 15 U.S.C. sections 3301 through 3432 (1982), to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1983)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. The Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado that an additional area of the Niobrara Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on April 24, 1987.

Public Hearing: No public hearing is scheduled in this docket as of yet. Written requests for a public hearing are due on March 24, 1987.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold (202) 357-9114, or Victor Zabel (202) 357-8616.

Issued March 10, 1987.

I. Background

On February 9, 1987, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (18 CFR 271.703 (1983)), than an additional area of the Niobrara Formation located in Boulder, Larimer and Weld Counties, Colorado, be designated as a tight formation. The Commission previously adopted a recommendation that the Niobrara Formation be designated a tight formation (Order No. 386 issued June 26, 1984, in Docket No. RM79-76-226 (Colorado-38)). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the additional area of the Niobrara Formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Niobrara Formation is located in Weld County, Colorado, in Township 4 North, Range 68 West, Sections 7, 8, 17-20, 29-32, in Larimer County, Colorado, in Township 4 North, Range 69 West, Sections 11-14, 23-27, 34-36, and Township 3 North, Range 69 West, Sections 1-3, 6th P.M. No federal acreage is included in the recommended area and the area contains approximately 25 square miles.

The Niobrara Formation underlies the Pierre Shale and overlies the Codell Formation. Shales, mudstones, limestones, and dolomites comprise the Niobrara Formation. The top of the Niobrara Formation varies in depth from zero to 7,000 feet and averages 5,300 feet. The Niobrara Formation averages 225 feet in thickness and the formation is of Cretaceous age.

III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-43-1 convened by Colorado on this matter demonstrates that:

(1) The average in situ gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further assets that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, (Reg. Preambles 1977-1981) FERC Stats. and Regs. ¶ 30,180 (1980), the Director gives notice of the proposal submitted by Colorado that the additional area of the Niobrara Formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before April 24, 1987. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-255 (Colorado-38 Addition) and should give reasons including supporting data for any recommendation. Comments should

include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. The person shall specify the amount of time requested at the hearing, and should file the request with the Secretary of the Commission no later than March 24, 1987.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

Accordingly, the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, will be amended as set forth below, in the event the Commission adopts Colorado's recommendation.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

1. The authority citation for Part 271 reads as follows:

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

2. Section 271.703 is amended by redesignating paragraph (d)(166) as (d)(166)(i) and paragraphs (d)(166)(i) and (d)(166)(ii) as (d)(166)(i)(A) and (d)(166)(i)(B) respectively.

3. Section 271.703 is amended by adding paragraph (d)(166)(ii) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(166) *Niobrara Formation in Colorado.* RM79–76–226 (Colorado–38).

(ii) Niobrara Formation in Colorado, RM79–76–255 (Colorado–38 Addition)

(A) *Delineation of formation.* The Niobrara Formation is located in Weld County, Colorado, in Township 4 North, Range 68 West, Sections 7, 8, 17–20, 29–32; and in Larimer County, Colorado, in Township 4 North, Range 69 West, Sections 11–14, 23–27, 34–36; and Township 3 North, Range 69 West, Sections 1–3, 6th P.M.

(B) *Depth.* The average depth to the top of the Niobrara is 5300 feet.

[FR Doc. 87–5488 Filed 3–12–87; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Divison

41 CFR Part 50–201

General Regulations Under the Walsh-Healey Public Contracts Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor proposes to revise the regulatory provisions regarding the involvement of the Small Business Administration (SBA) in the administrative procedures for determining whether a small business concern qualifies for award of Government supply contracts as either a "manufacturer" or "regular dealer," to whom the award of covered contracts is restricted by the Walsh-Healy Public Contracts Act (PCA). SBA has requested revisions to the regulations which would eliminate the provision that requires SBA to render PCA eligibility determinations in protest cases in which the contracting officer has found a small business bidder to be eligible under the PCA. Additional revisions requested by SBA would streamline the processing of eligibility determination cases between the contracting agencies, SBA, and the Department of Labor and help speed up procurement activities in certain instances.

DATE: Comments must be received on or before May 12, 1987.

ADDRESS: Address comments to Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room A–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523–8305. (This is not a toll free number.)

SUPPLEMENTARY INFORMTION: The Walsh-Healy Public Contracts Act (PCA) provides labor standards for employees working on Federal contracts in excess of $10,000 calling for the manufacture of furnishing of materials, supplies, articles or equipment. Section 1(a) of the PCA provides that contracts subject to the Act may only be awarded to a manufacturer of or a regular dealer in the material, supplies, articles, or equipment to be manufactured or used in the performance of the contract. Contracting agencies must determine in the first instance whether a bidder in line for contract award qualifies for award according to criteria in the Labor Department's regulations (41 CFR 50–201 and 50–206), and the agency determinations are subject to review by the Department. In cases involving small businesses, the Small Business Act, as amended, empowers the SBA to overturn, or review, a contracting agency's finding of ineligibility and to certify a small business to be eligible to perform a particular government contract.

As set forth in 41 CFR 50–201.101(b), the current procedures for a small businesses require SBA review of all contracting agency findings of ineligibility, as well as all protests which challenge an agency's finding of eligibility. SBA did not have an opportunity to comment when the current rules were first adopted following enactment of the 1977 amendments to the Small Business Act (Pub. L. 95–89, 91 Stat. (15 U.S.C. 637(b)(7)(B)). SBA believes its review authority under the Act is restricted to only executive branch agency findings of noneligibility under PCA, and has requested revisions to the regulations which would eliminate SBA review under the following circumstances: (1) Competitor protest cases which challenge the contracting officer's determination, after review of the protest, that a small business firm is eligible under PCA; (2) cases involving contracts awarded by agencies which are not subject to the Small Business Act because they are outside the executive branch (e.g., contracts with the U.S. Postal Service and District of Columbia Government); and (3) cases where either the contracting officer or SBA has found that the firm is to be denied award for procurement reasons other than a finding of ineligibility under PCA (e.g., determination of "non-responsibility" where SBA has declined to issue a Certificate of Competency). Regulatory revisions are thus being proposed in order to accommodate SBA's requests.

In addition, SBA requested revisions to the regulations to provide that if a firm did not contest the initial finding of

ineligibility and submitted no information on its own behalf to SBA, such ineligibility determination would become final and would not be referred by SBA to the Department of Labor. However, it was determined upon review that since the language of section 8(b)(7)(B) of the Small Business Act mandates that SBA forward such cases to the Secretary of Labor for final disposition, this part of SBA's request is precluded by law and cannot, therefore, be adopted by regulation. In this connection, clarifying revisions are also being proposed in § 50.201.101(b)(6) to make certain that contract awards will be held in abeyance until a final eligibility determination is rendered in those cases that are subject to SBA review, as required by section 8(b)(7) of the Small Business Act.

The revisions being proposed will streamline the processing of PCA eligibility determination cases for contracting agencies as well as SBA, and will make the procedures more efficient by reducing the time required for resolving competitor protest cases of eligibility by referring them directly to DOL and not through SBA. Section 8(b)(7)(B) of the Small Business Act, as amended, requires that SBA review PCA eligibility cases where the contracting officer has determined that an otherwise qualified small business bidder is ineligible under the PCA. Thus, the proposed changes would not violate section 8(b)(7)(B) of the Small Business Act.

Classification

This rule is procedural in character. It is not classified as a "major rule" under Executive Order 12291 on Federal Regulation because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

As noted, this rule is procedural in character. Further, the proposed revisions in the procedures for processing PCA eligibility cases, if adopted, would not have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*). However, since in all likelihood the only business entities which would be affected by the proposed changes are small business entitites, the Department has prepared the following Regulatory Flexibility Analysis in connection with this rule.

Regulatory Flexibility Analysis

(1) Reasons Why Action Is Being Considered

The Walsh-Healey Public Contracts Act (PCA) restricts the award of contracts covered by its terms to either a "manufacturer" or "regular dealer." The Small Business Act, as amended, provides for SBA review of contracting officer determinations which find that an otherwise qualified small business bidder is ineligible under PCA. In implementing the 1977 amendments to the Small Business Act, the Department of Labor delegated to SBA the review responsibility for all eligibility determinations involving small businesses, including competitor protest cases in which the contracting officer had determined that the small business bidder was eligible for award. It was believed that this delegation was in accord with the spirit and intent, if not the strict language, of section 8(b)(7)(B) of the Small Business Act, as amended. However, SBA has since indicated it is no longer able to assume the additional delegated responsibilities because of resource limitations and increased workload. The proposed revisions are thus being considered in order to accommodate SBA's requests and at the same time make the administrative PCA eligibility determination procedures more efficient and less burdensome on the procurement process.

(2) Objectives of and Legal Basis for Rule

These regulations are issued under the authority of the Walsh-Healey Public Contracts Act (Pub. L. 846, 74th Cong., 2d Sess., 49 Stat. 2036, 41 U.S.C. 35, *et seq.*). The objective of these regulations is to provide efficient and effective administrative procedures for contracting agencies, SBA, and the Department of Labor to follow in making determinations of the eligibility status of small business concerns as either "manufacturers" or "regular dealers" qualified for contract award under the PCA. In accordance with the Small Business Act, as amended, the regulations provide for SBA review of contracting agency determinations that an otherwise qualified small business bidder is not eligible under PCA, and authorize SBA to dismiss the agency determination on review and to certify a small business bidder to be eligible to perform a specific government contract.

(3) Number of Small Entities Covered Under the Rule

Small businesses received approximately $25 billion (14%) of the $183 billion in Federal prime contracts over $10,000 awarded in Fiscal Year (FY) 1985, or 173,431 (42%) of the 415,033 prime contracts awarded.[1] Of the total contracts awarded in FY 1985, contracts totaling approximately 67% of the total value of all contracts, and 49% of the total number of all contract actions, were subject to PCA.[1] Therefore, we estimate that small businesses received $16.75 billion in prime contracts, and 84,976 prime contract actions, that were subject to PCA in FY 1985.

Information which would indicate the precise number of PCA ineligibility cases that are referred annually to SBA by the contracting agencies was not available from SBA. However, in FY 1983 (the latest data available), SBA received 2,955 "nonresponsibility" referrals under SBA's Certificate of Competency (COC) program.[2] (See (5) below.) Under the COC program, determinations made by a contracting officer that a small business bidder or offeror is not capable of performing a particular contract for reasons of competency, capacity, credit, integrity, perseverance, tenacity, and the like must be referred to SBA for an independent responsibility review. Of the 2,955 nonresponsibility referrals, small businesses filed 1,118 applications for COCs, which resulted in the issuance of 571 COCs.[2]

Accordingly, based upon the percentage of all contract actions subject to PCA in FY 1985, and the total number of all COC referrals to SBA in FY 1983, we estimate the number of COC referrals annually which might have involved PCA eligibility considerations to be 1,448 (2,955 × 49%). However, this figure estimates the number of PCA eligibility cases in which the contracting agency initially determined a small business to be *ineligible*. Our own review of past PCA eligibility determination cases indicates that the number of competitor *protest* cases which would represent the category of cases to be impacted by the

[1] Federal Procurement Data System Standard Report, Fiscal Year 1985, Fourth Quarter, p. 15.

[2] The State of Small Business: A Report of the President Transmitted to Congress March 1984, Together with the Annual Report on Small Business and Competition of the U.S. Small Business Administration (Washington, DC: U.S. Government Printing Office, March 1984), p. 329.

proposed regulation changes would be on the order of no more than 20 to 30 per year.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The rule contains no reporting, recordkeeping, or other compliance requirements applicable to small entities.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

Adoption of the proposed amendment will require conforming amendments to the Federal Acquisition Regulation, Chapter 1 of Title 48 of the Code of Federal Regulations (*see*, for example, 48 CFR 22.608–3), in order to avoid any inconsistency with the combined, governmentwide procurement regulations which overlap and duplicate PCA's implementing regulations.

Additionally, under other applicable procurement law, before awarding a Government contract, the contracting agency must review the qualifications of bidders or offerors and certify that the low bidder or offeror in line for award is capable of performing the contract in terms of having adequate financial resources (or an ability to obtain them), the ability to meet delivery or performance schedules, and a satisfactory record of performance and integrity. If the low bidder is a small business, the final determination of "competency" to perform the contract rests by law with SBA (15 U.S.C. 637(B)(7)(A)). If the contracting officer rules that a small business in line for award is not capable of performing a particular contract, that determination must be referred to SBA for an independent responsibility review under SBA's Certificate of Competency (COC) program. SBA then offers the firm an opportunity to apply for a "certificate" from SBA. If SBA issues the cerfificate, SBA certifies that the firm possesses a responsibility or an eligibility to perform on the specific contract. SBA's COC program is codified at 13 CFR 125.5.

(6) Differing Compliance or Reporting Requirements for Small Entities

As noted in (4) above, this rule does not contain compliance or reporting requirements for small entities. However, the only appropriate alternative to the proposed rule is the presently existing rule under which SBA is required to review all determinations of PCA eligibility involving small businesses, including competitor protests which challenge an agency's finding that a small business is eligible.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As noted, the rule contains no compliance or reporting requirements for small entities. However, the proposed rule would simplify the processing of eligibility cases between contracting agencies, SBA, and DOL, thereby reducing the overall administrative burden on the Govenment.

(8) Use of Other Standards

The use of alternative standards such as performance standards rather than design standards is not a relevant consideration under this rulemaking.

(9) Exemption From Coverage for Small Entities

Exemption from coverage under this rule for small entities would not be appropriate given the statutory mandate in PCA that covered supply contracts in excess of $10,000 be awarded only to qualifying "manufacturers" or "regular dealers." In addition, the rule implements a specific statutory directive in the Small Business Act, as amended, that SBA review agency findings of PCA ineligibility affecting small businesses. Accordingly, an exemption would not be feasible.

Summary

Based upon the foregoing analysis, the revised procedures contained in this proposed rule, if promulgated, are not expected to have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This conclusion is reached because the number of affected business entities is not substantial, and any economic impact resulting from the revised procedures would be minimal. In fact, the new procedures will have a salutary effect in advancing the purposes of the Regulatory Flexibility Act by reducing regulatory burdens on the procurement process.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 41 CFR Part 50–201

Administrative practice and procedure, Child labor, Government contracts, Government procurement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Signed at Washington, D.C., this 6th day of March 1987.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 50–201—GENERAL REGULATIONS

41 CFR Part 50–201 is proposed to be amended as follows:

1. The authority citation for Part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40.

2. In § 50–201.101, paragraph (b) is proposed to be revised as follows:

§ 50–201.101 Manufacturer or regular dealer.

* * * * *

(b) *Determination of eligibility.* (1) The responsibility for applying the stated eligibility requirements to determine before award whether a bidder as a manufacturer or regular dealer qualifies rests in the first instance with the contracting agency pursuant to authority delegated by the Secretary of Labor in accordance with section 4 of the Act. (Circular Letter 8–61.) Contracting agencies shall obtain and consider all available factual evidence essential to eligibility determinations for all bidders in line for award of contracts subject to the Act. Any decision of the contracting agency is subject to review by the Department of Labor according to the procedures outlined below. The Department of Labor shall give great weight to the technical knowledge and expertise of the contracting agencies and shall uphold the contracting agencies' initial determinations unless the determinations are found to be arbitary, capricious or otherwise not in accordance with the evidence presented or with the law. The decision of the Department of Labor shall be final with respect to the procurement or procurements at issue. The Department of Labor may determine the qualifications of a bidder in the first instance in the absence of any decision by the contracting agency.

(2) The contracting agency shall investigate and determine the Walsh

Healey eligibility status of a bidder and shall not merely rely on the representation or affirmation of a bidder in at least the following circumstances:

(i) Where the bidder (or bidders) in line for contract award has not previously been awarded a contract subject to the Act by the individual procuring office and/or where a pre-award investigation or survey of such bidder's operations is otherwise made to determine the technical and production capability, plant facilities and equipment, subcontracting and labor resources of such bidder (or bidders).

(ii) Where there is a protest of a bidder's eligibility; and

(iii) Where a contracting officer has reason to question a bidder's eligibility, such as where the proposed place of contract performance and shipment is other than the location of the bidder's place of business.

(3) If the contracting officer determines that an apparently successful bidder or offeror that is *not* a small business concern is ineligible, the contracting officer shall (i) promptly notify the bidder or offeror in writing that:

(A) It does not meet the eligibility requirements, and the specific reason therefor; and

(B) It may protest such determination by submitting any evidence concerning its eligibility to the contracting officer within a reasonable time as set by the contracting officer.

(ii) If, after review of the evidence submitted by the bidder or offeror, the contracting officer does not reverse the decision, the contracting officer shall notify the bidder or offeror of the determination and the reasons therefor.

(iii) If the bidder or offeror still disagrees with the finding, the bidder's or offeror's protest, together with all pertinent evidence, will be forwarded to the Administrator of the Wage and Hour Division of the Department of Labor for a final determination, and the bidder or offeror will be so notified.

(iv) If a bidder has been conclusively denied award for procurement reasons other than a finding of ineligibility under the Walsh-Healey Act (e.g., a finding of nonresponsibility), the Walsh-Healey eligibility status becomes moot and the case need not be processed further, regardless of whether the contracting officer rendered an initial finding of ineligibility under Walsh-Healey.

(4) In the case of a small business concern, the notification and protest procedures in paragraph (b)(3) of this section, shall be followed except that any finding of ineligibility rendered by an agency of the executive branch subject to the requirements of the Small Business Act (15 U.S.C. 637c.) shall be forwarded with all pertinent evidence to the Administrator of the Small Business Administration, whether or not the small business concern protests the determination, and the bidder or offeror shall be so notified. The Administrator of the Small Business Administration shall review the finding of the contracting officer and shall either dismiss it and certify the small business concern to be eligible for the contract award in question, or if it concurs in the finding, forward the matter to the Administrator of the Wage and Hour Division for a final determination, in which case the Small Business Administration may certify the small business concern only if the Wage and Hour Division finds the small business concern to be eligible. The Small Business Administration is bound by the regulations and interpretations of the Department of Labor in making its determinations of eligibility under the Walsh-Healey Act.

(5) When another bidder or offeror challenges the eligibility of the apparently successful bidder or offeror prior to award, the contracting officer shall promptly notify the protestor and the apparently successful bidder or offeror in writing that:

(i) They may submit evidence concerning the matter to the contracting officer within a reasonable time as set by the contracting officer; and

(ii) After review of such evidence the contracting officer will direct a preaward survey, if necessary, and reach a decision on all the evidence and notify the protestor and successful bidder of his/her finding. If either party disagrees with the finding, the contracting officer shall notify the parties and then forward the decision and entire record to the Administrator of the Wage and Hour Division for a final determination. However, if the apparently successful bidder or offeror is a small business concern and the contracting officer has found the small business concern to be ineligible, the protest and all pertinent evidence will be forwarded to the Administrator of the Small Business Administration, and the procedures set forth in § 50–201.101(b)(4) shall be followed.

(6)(i) If the contracting officer forwards the case to the Administrator of the Small Business Administration for review of eligibility under the Act pursuant to § 50–201.101(b) (4) or (5), award will be held in abeyance until the contracting officer receives a final determination. (ii) If the contracting officer forwards a case which does not involve a small business concern to the Department of Labor for review of eligibility under the Act, award will be held in abeyance until the contracting officer receives a final determination from the Department of Labor, unless the contracting officer finds that award should be made immediately because:

(A) The items to be procured are ungently required; or

(B) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(iii) If the contracting officer decides to proceed with the award, the contracting officer shall give written notice of the decision to proceed to the protester, the Department of Labor and to other concerned parties.

(iv) If an award is made under paragraph (b)(6)(ii) of this section, the contracting officer shall submit to the Department of Labor documentation explaining the need for making an award prior to the receipt of a final determination from the Administrator of the Wage and Hour Division.

(7) A protest received after award, but before final completion of the contract, shall be investigated and processed under the provisions outlined in paragraph (b)(5) of this section and forwarded to the Department of Labor, and the protestor shall be so notified.

(8) If the contract has been completed before receipt of the protest, the protester shall be notified that no action will be taken on the protest.

[FR Doc. 87–5464 Filed 3–12–87; 8:45 am]
BILLING CODE 4510–27–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MM Docket No. 87–13; FCC 87–43]

FM Radio, Television; Amendment to the Commission's Rules on FM Booster Stations and Television Booster Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making (Notice) seeks comment on a proposal to amend the Commission's rules to permit substantial increases in the output power of FM booster stations and to eliminate the restriction that such stations may only rebroadcast signals received over-the-air. This action is in response to a Petition for Rule Making filed by Brill Media Company, Inc. (Brill), on June 30, 1986. The Commission also proposes to amend its television

translator rules to authorize licensees of television stations to operate television boosters within their predicted service areas in a manner similar to that proposed for FM boosters. The Commission believes the proposed rule changes would provide opportunities for more efficient and effective use of on-channel FM and television booster facilities to provide service to underserved and unserved areas and populations. The Commission seeks comment on the feasibility of the proposed FM and television booster services and the technical regulations we propose for their implementation.

DATES: Comments due April 10, 1987; replies due April 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of proposed Rule Making in MM Docket No. 87-13, adopted February 2, 1987, and released February 19, 1987. The full text of this Commission decision, including the proposed amendments to our rules, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Notice of Proposed Rule Making

1. On June 30, 1986, Brill filed a Petition for Rule Making requesting that the Commission consider two proposals for changes to the FM booster rules that it believes would improve the ability of full service FM stations to provide high quality radio service thoughout their licensed service areas. Brill's proposals would authorize FM boosters to operate with transmitter output power in excess of the 10 watts maximum that is currently authorized and would permit the primary station's signal to be delivered to FM booster stations by whatever technical means the licensee deems suitable, not just over-the-air as is currently permissible.

2. In this Notice, the Commission proposes to authorize an increase in FM booster output power, as suggested by Brill. A key issue to be decided in this proceeding is the technical standards to be applied to ensure that FM boosters do not extend the service area of their primary stations in a manner that would be inconsistent with our FM allotments scheme or increase interference to the service of other stations. One alternative would be to adopt the effective radiated power (ERP) and idealized service radius (ISR) limits proposed by Brill. However, the Commission believes that more appropriate standards would be to simply provide that boosters may not extend the 1 mV/m predicted coverage area of the primary station beyond its protected coverage area and to specify interference standards for protection of co-channel and first, second, and third adjacent channel stations.

3. The Commission agrees with Brill that the use of FM booster stations is limited in many areas by the restriction that such stations may only retransmit signals received over-the-air from the primary FM station. It believes that this rule hinders the placement and operation of booster stations in a manner that is contrary to our purposes in authorizing such stations. Therefore, the Commission proposes to eliminate this restriction and to permit FM licensees full discretion to feed signals to boosters by whatever technical means they deem suitable, including the use of aural broadcast auxiliary channels on a secondary, noninterference basis.

4. In considering modifications to the FM booster rules, the Commission recognized the similarity between the purpose and function of FM booster stations and some television translator stations that are used to provide fill-in service to areas shadowed by terrain. However, existing rules prohibit co-channel or adjacent channel translators that would retransmit a television station within its own predicted Grade B contour. The Commission now believes that this restriction unnecessarily limits the ability of television stations to use spectrum-efficient, on-channel booster transmitters to provide fill-in service to shadowed areas within the Grade B contours they are licensed to serve. Accordingly, in the Notice, the Commission proposes to establish a "television broadcast booster station" service that would provide this service. The Commission proposes to limit the operating power and location of television boosters only to the extent that they not provide Grade B or higher level service beyond the predicted Grade B contour of the primary television station or increase interference to other television broadcast stations. Since the proposed television booster service essentially would represent a technical extension of the television station being rebroadcast, the Commission also proposes to limit the ownership of television boosters to the licensee of the station being rebroadcast and exempt such licensees from the competitive applications process in order to expedite the implementation of this service.

5. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding proposes to permit FM booster stations to increase their authorized power and to retransmit signals received by any technical means the licensee deems suitable in order to expand radio service to areas that are currently underserved. This Notice also proposes to authorize on-channel television translators, equivalent to FM booster stations, that would increase television service to underserved areas in an administratively expeditious manner. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

7. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

8. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before April 10, 1987; and reply comments on or before April 27, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

9. Accordingly, it is proposed that Part 74 of the Commission's rules and regulations be amended as set forth below.

10. This Notice of Proposed Rule Making is issued pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 74

Radio Broadcasting, Television Broadcasting.

Rule Changes

Part 74 of Title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

1. The authority citation for Part 74 would continue to read as follows:

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

2. 47 CFR 74.501 is proposed to be amended by revising paragraphs (a) and (b) to read as follows:

§ 74.501 Classes of aural broadcast auxiliary stations.

(a) *Aural broadcast STL station.* A fixed station utilizing telephony for the transmission of aural program material between a studio and the transmitter of a broadcasting station other than an international broadcasting station, for simultaneous or delayed broadcast, or other purposes as authorized in § 74.531.

(b) *Aural broadcast intercity relay stations.* A fixed station for the transmission of aural program material between radio broadcast stations, other than international broadcast stations, and between FM radio broadcast stations and their co-owned FM booster stations, or other purposes as authorized in § 74.531.

* * * * *

3. 47 CFR 74.531 is proposed to be amended by redesignating paragraphs (c) through (f) as (d) through (g) and adding new paragraph (c) to read as follows:

§ 74.531 Permissible service.

* * * * *

(c) An aural broadcast STL or intercity relay may be used to transmit material between an FM broadcast radio station and an FM booster station owned, operated, and controlled by the licensee of the originating FM radio station. This use shall not interfere with or otherwise preclude use of these broadcast auxiliary facilities by broadcast auxiliary stations transmitting aural programming between the studio and transmitter location of a broadcast station or between broadcast stations as provided in paragraphs (a) and (b) of this section.

* * * * *

4. 47 CFR 74.532 is proposed to be amended by revising paragraph (a) to read as follows:

§ 74.532 Licensing requirements.

(a) An aural broadcast STL or intercity relay station will be licensed only to the licensee or licensees of broadcast stations other than international broadcast stations, and for use by broadcast stations or FM booster stations owned entirely by or under common control of the licensee or licensees.

* * * * *

5. 47 CFR 74.701 is proposed to be amended by adding paragraph (i) to read as follows:

§ 74.701 Definitions.

* * * * *

(i) *Television broadcast booster station.* A station in the broadcast service operated by the licensee or permitee of a full service television broadcast station for the purpose of retransmitting the programs and signals of such primary station without significantly altering any characteristic of the original signal other than its amplitude. A television broadcast booster station may only be located within the protected contour of the primary station it retransmits.

6. 47 CFR 74.702 is proposed to be amended by adding paragraph (c) to read as follows:

§ 74.702 Channel assignments.

* * * * *

(c) A television broadcast booster station will be assigned the channel assigned to its primary station.

7. 47 CFR 74.703 is proposed to be amended by revising paragraphs (a) through (c) to read as follows:

§ 74.703 Interference.

(a) An application for a new low power TV, TV translator, or TV booster station or for change in the facilities of an authorized station will not be granted when it is apparent that interference will be caused. The licensee of a new low power TV, TV translator, or TV booster shall protect existing low power TV and TV translator stations from interference within the protected contour defined in § 74.707.

(b) It shall be the responsibility of the licensee of a low power TV, TV translator, or TV booster station to correct at its expense any condition of interference to the direct reception of the signal of a TV broadcast station operating on the same channel as that used by the low power TV, TV translator, or TV booster station or an adjacent channel which occurs as a result of the operation of the low power TV, TV translator, or TV booster station. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the low power TV, TV translator, or TV booster station, regardless of the quality of the reception or the strength of the signal so used. If the interference cannot be promptly eliminated by the application of suitable techniques, operation of the offending low power TV, TV translator, or TV booster station shall be suspended and shall not be resumed until the interference has been eliminated. If the complainant refuses to permit the low power TV, TV translator, or TV booster station to apply remedial techniques that demonstrably will eliminate the interference without impairment of the original reception, the licensee of the low power TV, TV translator, or TV booster station station is absolved of further responsibility.

(c) It shall be the responsibility of the licensee of a low power TV, TV translator, or TV booster station to correct any condition of interference which results from the radiation of radio frequency energy outside its assigned channel. Upon notice by the FCC to the station licensee or operator that such interference is caused by spurious omissions of the station, operation of the station shall immediately be suspended and not resumed until the interference has been eliminated. However, short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

* * * * *

8. 47 CFR 74.705 is proposed to be amended by revising paragraph (b)(1), paragraph (c), and paragraphs (d) introductory text and (d)(1)(ii) to read as follows:

§ 74.705 TV broadcast station protection.

* * * * *

(b)(1) An application to construct a new low power TV, TV translator, or TV booster station or change the facilities of an existing station will not be accepted if it specifies a site that is within the protected contour of a co-channel or first adjacent channel TV broadcast station.

* * * * *

(c) The low power TV, TV translator, or TV booster station field strength is calculated from the proposed effective radiated power (ERP) and the antenna height above average terrain (HAAT) in pertinent directions.

(1) For co-channel protection, the field strength is calculated using Figure 9a, 10a, or 10c of § 73.699 (F(50,10) charts) of Part 73 of this chapter.

(2) For low power TV, TV translator, and TV boosters that do not specify the same channel as the TV broadcast station to be protected, the field strength is calculated using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of Part 73 of this chapter.

(d) A low power TV, TV translator, or TV booster application will not be accepted if the ratio in dB of its field strength to that of the TV broadcast station at the protected contour fails to meet the following:

* * * * *

(ii) A description of the means by which the low power TV, TV translator, or TV booster station will be maintained

within the tolerances specified in § 74.761 for offset operation.

* * * * *

9. 47 CFR 74.707 is proposed to be amended by revising paragraphs (a)(1) introductory text, (b)(1), (b)(3), (c) introductory text, (c)(2), (d) introductory text, and (d)(1)(ii) to read as follows:

§ 74.707 Low power TV and TV translator station protection.

(a)(1) A low power TV or TV translator will be protected from interference from other low power TV or TV translator stations, or TV booster stations within the following predicted contours:

* * * * *

(b)(1) An application to construct a new low power TV, TV translator, or TV booster station or change the facilities of an existing station will not be accepted if it specifies a site which is within the protected contour of a co-channel or first adjacent channel low power TV, TV translator, or TV booster station.

* * * * *

(3) A UHF low power TV, TV translator, or TV booster construction permit application will not be accepted if it specifies a site within the UHF low power TV, TV translator, or TV booster station's protected contour and proposes operation on a channel either 7 channels below or 14 or 15 channels above the channel in use by the low power TV, TV translator, or TV booster station.

(c) The low power TV, TV translator, or TV booster construction permit application field strength is calculated from the proposed effective radiated power (ERP) and the antenna above average terrain (HAAT) in pertinent directions.

* * * * *

(2) For low power TV, TV translator, or TV booster applications that do not specify the same channel as the low power TV, TV translator, or TV booster station to be protected, the field strength is calculated using Figure 9, 10, or 10b of § 73.699 (F(50,50) charts) of Part 73 of this chapter.

(d) A low power TV, TV translator, or TV booster station application will not be accepted if the ratio in dB of its field strength to that of the authorized low power TV, TV translator, or TV booster station at its protected contour fails to meet the following:

(1) * * *

(ii) A description of the means by which the low power TV, TV translator, or TV booster station's frequencies will be maintained within the tolerances specified in § 74.761 for offset operation.

* * * * *

10. 47 CFR 74.731 is proposed to be amended by adding paragraphs (j) and (k) to read as follows:

§ 74.731 Purpose and permissible service.

* * * * *

(j) Television broadcast booster stations provide a means whereby the licensee of a television broadcast station may provide service to areas of low signal strength in any region within the primary station's Grade B contour. A television broadcast booster station is authorized to retransmit only the signals of its primary station; it shall not retransmit the signals of any other stations nor make independent transmissions. However, locally generated signals may be used to excite the booster apparatus for the purpose of conducting tests and measurements essential to the proper installation and maintenance of the apparatus.

(k) The transmissions of a television broadcast booster station shall be intended for direct reception by the general public. Such stations will not be permitted to establish a point-to-point television relay system.

11. 47 CFR 74.732 is proposed to be amended by adding paragraphs (g), (h), and (i) to read as follows:

§ 74.732 Eligibility and licensing requirements.

* * * * *

(g) A television broadcast booster station will be authorized only to the licensee or permittee of the television station whose signals the booster will rebroadcast, to areas within the Grade B contour of the primary station.

(h) No numerical limit is placed on the number of booster stations that may be licensed to a single licensee. A separate license is required for each television broadcast booster station.

(i) Each application for a television broadcast booster station shall include a statement concerning the steps that have been taken in the design and location of the equipment to ensure that areas served by the primary station will not be degraded by the operation of the booster station.

12. 47 CFR 74.735 is proposed to be amended by revising paragraphs (a) and (d) to read as follows:

§ 74.735 Power limitations.

(a) The power output of the final radio frequency amplifier of a VHF low power TV, TV translator, or TV booster station, except as provided for in paragraphs (d) and (f) of this section shall not exceed 0.01 kW visual power. A UHF station shall be limited to a maximum of 1 kW peak visual power except as provided for in paragraph (f) of this section. In no event shall the transmitting apparatus be operated with a power output in excess of the manufacturer's rating.

* * * * *

(d) VHF low power TV, TV translator, and TV booster stations authorized on channels listed in the TV table of allocations (see § 73.606(b) of Part 73 of this chapter) will be authorized a maximum output power of the radio frequency amplifier of 0.1 kW peak visual power.

* * * * *

13. 47 CFR 74.736 is proposed to be amended by revising paragraph (a) to read as follows:

§ 74.736 Emissions and bandwidth.

(a) The license of a low power TV, TV translator, or TV booster station authorizes the transmission of the visual signal by amplitude modulation (A5) and the accompanying aural signal by frequency modulation (F3).

* * * * *

14. 47 CFR 74.737 is proposed to be amended by revising paragraph (a) to read as follows:

§ 74.737 Antenna location.

(a) An applicant for a new low power TV, TV translator, or TV booster station or for a change in the facilities of an authorized station shall endeavor to select a site that will provide a line-of-sight transmission path to the entire area intended to be served and at which there is available a suitable signal from the primary station, if any, that will be retransmitted.

* * * * *

15. 47 CFR 74.750 is proposed to be amended by revising paragraphs (a), (d) introductory test, (e)(1), (e)(2), and (g) to read as follows:

§ 74.750 Transmission system facilities.

(a) Application for new low power TV, TV translator, and TV booster stations and for increased transmitter power for previously authorized facilities will not be accepted unless the transmitter is listed in the FCC's list of equipment type accepted for licensing under the provisions of this subpart.

* * * * *

(d) Low power TV, TV translator and TV booster transmitting equipment using a modulation process for either program origination or rebroadcasting must meet the following requirements:

* * * * *

(e) * * *

(1) Any manufacturer of apparatus intended for use at low power TV, TV translator, or TV booster stations may

request type acceptance by following the procedures set forth in Part 2, Subpart J, of this chapter. Equipment found to be acceptable by the FCC will be listed in the "Radio Equipment List" published by the FCC. These lists are available for inspection at the FCC headquarters in Washington, D.C. or at any of its field offices.

(2) Low power TV, TV translator, and TV booster transmitting apparatus that has been type accepted by the FCC will normally be authorized without additional measurements from the applicant or licensee.

* * * * *

(g) Low power TV, TV translator, or TV booster stations installing new type accepted transmitting apparatus incorporating modulating equipment need not make equipment performance measurements and shall so indicate on the station license application. Stations adding new or replacing modulating equipment to existing low power, TV translator, or TV booster station transmitting apparatus must have a qualified operator (§ 74.18) examine the transmitting system after installation. This operator must certify in the application for the station license that the transmitting equipment meets the requirement of paragraph (d)(1) of this section. A report of the methods, measurements, and results must be kept in the station records. However, stations installing modulating equipment solely for the limited local origination of signals permitted by § 74.731 need not comply with the requirements of this paragraph.

16. 47 CFR 74.751 is proposed to be amended by revising paragraph (b)(1) to read as follows:

§ 74.751 Modification of transmission systems.

* * * * *

(b) * * *

(1) Replacement of the transmitter as a whole, except replacement with a transmitter of identical power rating which has been type accepted by the FCC for use by low power TV, TV translator, and TV booster stations, or any change which could result in a change in the electrical characteristics or performance of the station.

* * * * *

17. 47 CFR 74.761 is proposed to be amended by revising the introductory paragraph and paragraph (d) to read as follows:

§ 74.761 Frequency tolerance.

The licensee of a low power TV, TV translator, or TV booster station shall maintain the transmitter output frequencies as set forth below. The frequency tolerance of stations using direct frequency conversion of a received signal and not engaging in offset carrier operation as set forth in paragraph (d) of this section will be referenced to the authorized plus or minus 10 kHz offset, if any, of the primary station.

* * * * *

(d) The visual carrier shall be maintained to within 1 kHz of the assigned channel carrier frequency if the low power TV, TV translator, or TV booster station is authorized with a specified offset designation in order to provide protection under the provisions of § 74.705 or § 74.707.

18. 47 CFR 74.762 is proposed to be revised to read as follows:

§ 74.762 Frequency measurements.

(a) The licensee of a low power TV station, a TV translator, or a TV booster station must measure the carrier frequencies of its output channel as often as necessary to ensure operation within the specified tolerances, and at least once each calendar year at intervals not exceeding 14 months.

(b) In the event that a low power TV, TV translator, or TV booster station is found to be operating beyond the frequency tolerance prescribed in § 74.761, the licensee promptly shall suspend operation of the transmitter and shall not resume operation until transmitter has been restored to its assigned frequencies. Adjustment of the frequency determining circuits of the transmitter shall be made only by a qualified person in accordance with § 74.750(g).

19. 47 CFR 74.763 is proposed to be amended by revising paragraphs (a) and (c) to read as follows:

§ 74.763 Time of operation.

(a) A low power TV, TV translator, or TV booster station is not required to adhere to any regular schedule of operation. However, the licensee of a TV translator or TV booster station is expected to provide service to the extent that such is within its control and to avoid unwarranted interruptions in the service provided.

* * * * *

(c) Failure of a low power TV, TV translator, or TV booster station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the FCC.

* * * * *

20. 47 CFR 74.780 is proposed to be amended by revising the title and the introductory text to read as follows:

§ 74.780 Broadcast regulations applicable to translators, low power, and booster stations.

The following rules are applicable to TV translator, lower power TV, and TV booster stations:

* * * * *

21. 47 CFR 74.781 is proposed to be amended by revising paragraph (a) to read as follows:

§ 74.781 Station records.

(a) The licensee of a low power TV, TV translator, or TV booster station shall maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents.

* * * * *

22. 47 CFR 74.784 is proposed to be amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 74.784 Rebroadcasts.

* * * * *

(d) A TV booster station may rebroadcast only programs and signals that are simultaneously transmitted by the primary station to which it is authorized.

* * * * *

23. 47 CFR 74.1201 is proposed to be amended by revising paragraph (f) to read as follows:

§ 74.1201 Definitions.

* * * * *

(f) *FM broadcast booster station.* A station in the broadcasting service operated for the sole purpose of retransmitting the signals of an FM radio broadcast station, by amplifying and reradiating such signals, without significantly altering any characteristic of the incoming signal other than its amplitude.

24. 47 CFR 74.1235 is proposed to be amended by adding paragraph (c) to read as follows:

§ 74.1235 Power limitations.

* * * * *

(c) The output power of FM booster stations shall be limited such that the 1 mV/m contour of such stations may not extend beyond the area covered by the predicted 1 mV/m contour of the primary station that they rebroadcast. Further, FM booster stations shall be subject to the requirement that the signal of any co-channel station must

exceed the signal of the booster station by 20 dB at all points with the protected contour of the co-channel station and that the ratio of the signal of any first, second, or third adjacent channel station to the booster's signal must exceed 6, –40, and –40 dB, respectively, at any location within the protected contour of such adjacent channel station.

25. 47 CFR 74.1236 is proposed to be amended by revising paragraph (a) to read as follows:

§ 74.1236 Emissions and bandwidth.

(a) The license of a station authorized under this subpart authorizes the transmission of each F3E or other types of frequency modulation upon a showing of need as long as the emission complies with the following:

(1) For transmitter output powers no greater than 10 watts, paragraphs (b), (c), and (d) of this section apply.

(2) For transmitter output powers greater than 10 watts, § 73.317 (a), (b), and (c) apply.

* * * * *

26. 47 CFR 74.1250 is proposed to be amended by revising paragraphs (c) introductory text, redesignating paragraphs (d) through (f) as paragraphs (e) through (g) and adding new paragraph (d) to read as follows:

§ 74.1250 Transmitters and associated equipment.

* * * * *

(c) The following requirements must be met before translator or booster equipment of 10 watts or less output power will be type accepted by the Commission:

* * * * *

(d) Booster station transmitters having power outputs in excess of 10 watts must meet the requirements of § 73.1660 of this chapter.

* * * * *

27. 47 CFR 74.1261 is proposed to be revised to read as follows:

§ 74.1261 Frequency tolerance.

The licensee of an FM translator station shall maintain the center frequency at the output of the translator within 0.01 percent of its assigned frequency. The output frequency of an FM booster station shall comply with the requirements of § 73.317(a)(2).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–5223 Filed 3–12–87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1987–88 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting seasons, daily bag and possession limits, and shooting hours for designated groups or species of migratory game birds in the conterminous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands during 1987–88. The Service annually prescribes migratory game bird hunting regulations. These regulations provide hunting opportunities, a popular form of outdoor recreation, to the public and aid Federal and State governments in the management of migratory game birds.

DATES: The comment period for proposed regulations frameworks for Alaska, Hawaii, Puerto Rico, and the Virgin Islands will end on June 18, 1987; for other early-season proposals (seasons opening before October 1) on July 14, 1987; and for late-season proposals (seasons opening on or about October 1 or later) on August 25, 1987. Public Hearings: Early-Season Regulations, including those for Alaska, Hawaii, Puerto Rico, and the Virgin Islands—June 18, 1987, at 9 a.m.; Late-Season Regulations—August 4, 1987, at 9 a.m. Both public hearings will be held in the Auditorium, Interior Department Building, 18th and C Streets NW., Washington, DC.

ADDRESSES: Comments and requests to testify may be mailed to Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Comments received may be inspected from 8 a.m. to 4 p.m. at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202) 254–3207.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service proposes to establish hunting seasons, bag and possession limits, and shooting hours for migratory game birds during 1987–88 under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K of 50 CFR Part 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. For the 1987–88 hunting season, regulations will be proposed for certain designated members of the avian families *Anatidae* (ducks, geese, brant, and swans); *Columbidae* (doves and pigeons); *Gruidae* (cranes); *Rallidae* (rails, coots, and moorhens and gallinules); and *Scolopacidae* (woodcock and snipe). These proposals are described under *Proposed 1987–88 Migratory Game Bird Hunting Regulations (Preliminary)* in this document.

Notice of Intention To Establish Open Seasons

This Notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons, daily bag and possession limits, and shooting hours for certain designated groups or species of migratory game birds for 1987–88 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

Factors Affecting Regulations Process

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposed shooting hours and season frameworks, including daily bag and possession limits, are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year.

The proposals set forth here and the schedule by which more detailed proposals for these and other species will be developed depend upon a number of factors. Among these are the times when various annual population, habitat, and harvest surveys are conducted and results are available for analysis; times of migration and other biological considerations; and times during which hunting may be allowed. The regulatory process for migratory game birds is strongly influenced by the times when the best and latest information is available for consideration in the development of regulations. For these reasons, the overall regulations process for hunting seasons and limits is divided into the following segments: (1) Regulations for migratory game birds in Alaska, Puerto Rico, the Virgin Islands, and Hawaii; (2) seasons in the remainder of the United

States opening prior to October 1 (early seasons); (3) seasons opening in the remainder of the United States about October 1 and later (late seasons) and (4) regulations for migratory game birds on certain Indian reservations and ceded lands. Regulations development for each of the four categories will follow similar but independent schedules. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to adjust their licensing and regulatory mechanisms and, on the other hand, the lack before late-July of current data on the status of most waterfowl.

Publication of Regulatory Documents

The establishment of migratory game bird hunting regulations in the United States involves a series of regulatory announcements published in the **Federal Register** in accordance with the Administrative Procedure Act. The publication of these documents is divided into three phases, as follows:

1. Proposed rulemakings—proposals to amend Subpart K (and other subparts when necessary) of 50 CFR Part 20, including supplementary proposed migratory game bird hunting regulations, and/or regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

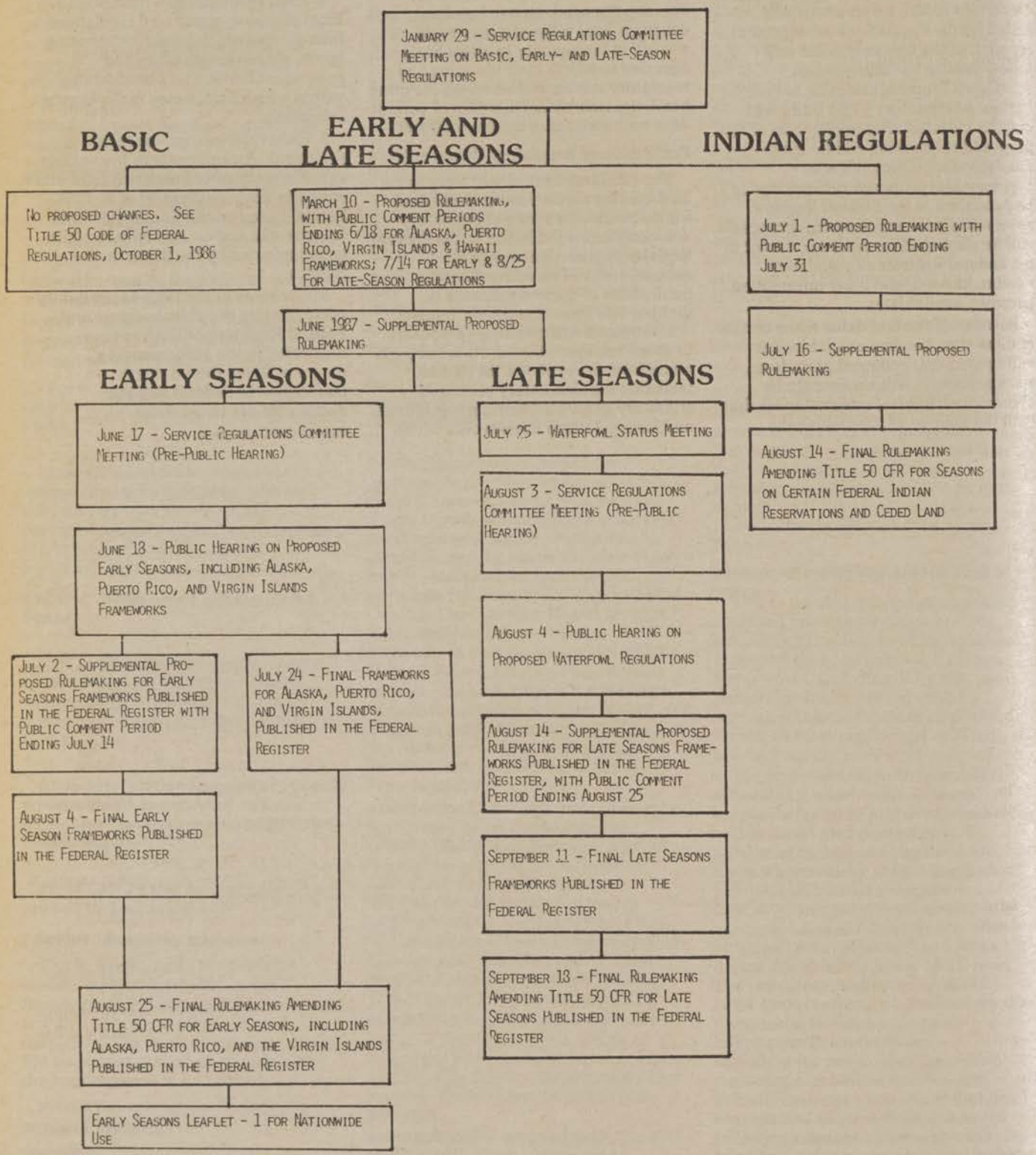
2. Final rulemakings—frameworks. Final migratory game bird regulations frameworks which prescribe shooting hours, season lengths, bag and possession limits, and outside dates within which States may make season selections.

3. Final rulemakings—season selections. Amendments to the various specific sections of Subpart K (and other subparts when necessary) of 50 CFR Part 20 based on the final regulations frameworks and on season selections communicated by the States to the Service.

Major steps in the 1987–88 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates.

BILLING CODE 4310-55-M

1987 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



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All dates shown for frameworks and seasons in the Service's regulatory documents are inclusive.

Non-toxic shot regulatory proposals and final regulations are published separately under § 20.21 of Subpart C and § 20.108 of Subpart K.

Objectives of the Migratory Bird Hunting Regulations.

The objectives of these annual regulations are as follows:

1. To provide an opportunity to harvest a portion of certain migratory game bird populations by establishing legal hunting seasons.
2. To limit harvest of migratory game birds to levels compatible with their ability to maintain their populations.
3. To avoid the taking of endangered or threatened species so that their continued existence is not jeopardized, and their conservation is enhanced.
4. To limit taking of other protected species where there is a reasonable possibility that hunting is likely to adversely affect their populations.
5. To provide equitable hunting opportunity in various parts of the country within limits imposed by abundance, migration, and distribution patterns of migratory game birds.
6. To assist, at times and in specific locations, in preventing depredations on agricultural crops by migratory game birds.

The management of migratory birds in North America is international in scope, and involves other nations, notably Canada and Mexico. Within the United States, other Federal agencies, State conservation agencies, national and regional conservation groups, universities, and the public provide much support to the achievement of these objectives.

Data Used in Regulatory Decisions

The establishment of hunting regulations for migratory game birds in the United States during the 1987–88 season will take into consideration available population information, data from harvest surveys, and information on habitat conditions. Consideration will also be given to accumulated data and trends. The main sources of data are operational surveys conducted by the U.S. Fish and Wildlife Service in cooperation with the Canadian Wildlife Service, Direccion General de la Flora y Fauna Silvestres of Mexico, State and Provincial wildlife agencies, and others. The Service will also consider technical information provided by consultants of the four waterfowl flyway councils. The information from these sources will be analyzed by the Service with an opportunity for the public to review and provide comments on management rationales and proposed regulations, either in public hearings, by correspondence, or other communications.

Various surveys are used to ascertain the status, condition, and trends of migratory game bird populations. These include surveys of major waterfowl wintering habitats in the United States and in portions of Mexico each January; aerial surveys of major waterfowl production areas in the United States and Canada in May and early June for breeding population data, and again in July for production information; nationwide surveys in the United States and Canada of waterfowl hunters and the waterfowl harvest, including their geographical and temporal distributions, and species, age, and sex composition of the harvest; and band recovery information. Waterfowl breeding pair and production surveys also provide information on the abundance, duration, and quality of water and other habitat conditions in major production areas. Information on waterfowl populations and habitat conditions outside the aerial survey area is furnished by cooperating State, Provincial, and private agencies. Banding information provides insight into shooting pressures sustained by migratory game bird populations under different population levels and types of regulations. When viewed over many years, information on harvests and regulations is useful for predicting approximate harvest levels which may result from various regulations changes.

Many of the surveys conducted primarily for ducks also provide information on geese. In addition, satellite imagery is used to monitor the rate at which snow and ice disappear from subarctic and arctic breeding grounds traditionally used by most species and the greatest numbers of North American geese. Field observations of geese in the fall and winter also provide information on the production success of the past breeding season. Special population surveys are undertaken for many identifiable populations of geese throughout the year.

An annual call-count survey conducted nationwide in the United States in late May and early June provides information on the breeding population of mourning doves. Information from past years and the current year is used to establish population trends. An annual singing-ground survey is conducted throughout the woodcock breeding range in the eastern United States and Canada. Insight into production success is obtained from wing-collection surveys of woodcock hunters in the United States and Canada; data from these surveys indicate the age and sex composition of the harvest and its geographical and temporal distribution. Accumulated and current data are examined for possible long-term trends in population size and productivity. Information on white-winged dove populations in Texas and the Southwest is provided by cooperating State agencies. Spring surveys of sandhill cranes are conducted annually with emphasis on the key staging area of the species along the Platte River in central Nebrask. The Service also solicits information on these and other species from knowlegeable individuals.

Definitions of Flyways

Flyways are administrative units with broad biological-ecological similarities frequently used for reference in setting hunting regulations on many migratory game birds. These are defined as follows:

Atlantic Flyway: Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway: Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway: Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas; Colorado and Wyoming east of the Continental Divide; Montana east of Hill, Chouteau, Cascade, Meagher and Park Counties; and New Mexico east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Pacific Flyway: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental divide plus the Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher, and Park, and all counties west thereof. Flights of most migratory game birds breeding or produced in Alaska are more strongly oriented to this flyway than to the other flyways.

Definitions of Mourning Dove Management Units

Mourning Dove Management Units are administrative units based upon a reasonable delineation of independent mourning dove population segments encompassing the principal breeding,

migration, and United States wintering areas for each population. They are used for reference in setting mourning dove hunting regulations and are defined as follows:

Eastern Management Unit: Alabama, Connecticut, Delaware, Florida, Georgia, Illinos, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Central Management Unit: Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Stabilized Regulations for Duck Hunting

In 1979, a five-year program of stabilized waterfowl hunting regulations was initiated in Canada through the cooperation of the Canadian Wildlife Service and the 3 Prairie Provinces. In 1980 the U.S. Fish and Wildlife Service, with support from the Flyway Councils and other organizations, joined Canada in this program by stabilizing season lengths and bag limits for a 5-year period beginning with the 1980–81 season at the 1979–80 hunting season level. During this five-year program, Canada and the United States have cooperated in investigating the relationship between duck populations and duck harvests continentally in the absence of annual changes in season lengths and bag limits. The July 1, 1980, **Federal Register** (at 45 FR 44546) advised that the Service planned to take this action in connection with an evaluation program to be conducted in cooperation with the Canadian Wildlife Service. The immediate goal of the study is to develop a strategy to manage duck harvests. The long-term goal is to identify management steps to maintain North American duck populations.

Cooperative U.S.-Canadian investigations of the stabilized regulations program have focused on the mallard. Although, the 1984–85 hunting season marked the final harvest period in the program, field activities, including banding, radio-telemetry, and nesting studies continued through 1985. Because of the time required for analysis and interpretation of data collected, a final, comprehensive report on the evaluation of stabilized regulations will not be available until later this year.

Migratory Bird Hunting on Indian Reservations

In the September 3, 1985, **Federal Register** (50 FR 35762), the Service implemented interim guidelines for establishng special migratory bird hunting regulations on Federal Indian reservations and ceded lands, and amended § 20.110 of 50 CFR Part 20 by prescribing final hunting regulations for certain tribes in the 1985–86 and 1986–87 hunting seasons. The guidelines provide appropriate flexibility for tribal members to exercise their reserved hunting rights while ensuring that the migratory bird resource receives necessary protection. On January 16, 1987 (at 52 FR 1942), the Service gave notice of its intent to continue to employ the interim guidelines and establish special migratory bird hunting regulations for interested Indian tribes in the 1987–88 hunting season. The Service recognizes that some changes in the guidelines may be necessary and has kept the comment period on them open indefinitely. Use of the guidelines is not necessary if a tribe wishes to observe the hunting regulations established in the State(s) in which the reservation is located.

Hearings

Two public hearings pertaining to 1987–88 migratory game bird hunting regulations are scheduled. Both meetings will be conducted in accordance with 455 DM 1 of the Department Manual. On June 18 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets NW., Washington, DC. This hearing is for the purpose of reviewing the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, gallinules and moorhens, common snipe, and sandhill cranes. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. On August 4 a public hearing will be held at 9 o'clock in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 18 public hearing. The public is invited to participate in both hearings.

Persons wishing to participate in these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240, or telephone (202) 254–3207. Those wishing to make statements should file copies of them with the Director before or during each hearing.

Public Comments Solicited

Based on the results of current migratory game bird studies and having due consideration of all data and views submitted by interested parties, the amendments resulting from these proposals will specify open seasons, shooting hours, and bag and possession limits for doves, pigeons, rails, gallinules and moorhens, woodcock, common snipe, coots, cranes, and waterfowl in the contiguous United States; coots, cranes, common snipe and waterfowl in Alaska; certain migratory game birds in Puerto Rico and the Virgin Islands; and mourning doves in Hawaii.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals.

Final promulgation of migratory game bird hunting regulations will take into consideration all comments received by the Director. Such comments, and any additional information received, may lead the director to adopt final regulations differing from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments as follows:

For comments on Proposed 1987–88 Migratory Game Bird Hunting Regulations (Preliminary) write to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240.

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC. The Service will consider but may not respond in detail to each comment. Specific comment periods will be

established for each of the four series of proposed rulemakings. All relevant comments will be accepted through the closing date of the last comment period on the particular proposal under consideration. As in the past, the Service will summarize all comments received during the comment period and respond to them.

Flyway Council Meetings

The Service published a final rule in the **Federal Register** dated December 22, 1981 (46 FR 62077) which established certain procedures in the development of the annual migratory game bird hunting regulations. This rule took effect on January 21, 1982. One provision is to publish notification of meetings of waterfowl flyway councils where Department of Interior officials will be in attendance. In this regard, Departmental representatives will be present at the following spring meetings of the various flyway councils:

Dates: March 22, 1987

Atlantic Flyway Council, 9:00 a.m.
Mississippi Flyway Council, 9:00 a.m.
Central Flyway Council, 8:30 a.m.
Pacific Flyway Council, 10:00 a.m.
National Waterfowl Council, 3:00 p.m.

Address: Council meetings will be held at Le Chateau Frontenac, Quebec City, Quebec, Canada, as follows:

Atlantic Flyway Council, Salon Quebec, 2nd Floor off Upper Lobby Level
Mississippi Flyway Council, Salon Laval, 3rd on Upper Lobby Level
Central Flyway Council, Salon Montcalm, 2nd Floor off Upper Lobby Level
Pacific Flyway Council, Salle Jacques-Cartier, Lobby Level
National Waterfowl Council, Salle Jacques-Cartier, Lobby Level

NEPA Consideration

In 1975 the Service determined that the annual migratory bird hunting regulations constituted a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. Consequently, the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was prepared and filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement (FES). These have addressed regulations for various species of migratory game birds and hunting strategies. In the July 31, 1986, **Federal Register** the Service gave notice of its intent to prepare a supplemental environmental impact statement (EIS) on the FES. The Service anticipates a late spring, 1987, publication date for a draft supplemental EIS to be followed by public meetings prior to preparation of the final supplemental EIS.

Endangered Species Act Consideration

Prior to issuance of the 1987–88 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to insure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

In complying with these requirements during the 1981–82 regulatory development cycle, and with Office of Management and Budget concurrence, the Service prepared a Determination of Effects, a Preliminary Regulatory Impact Analysis (PRIA), a Final Regulatory Impact Analysis (FRIA), and a Memorandum of Law. For further information see the **Federal Register**: March 25, 1981, at 46 FR 18669; August 17, 1981, at 46 FR 41739; August 21, 1981, at 46 FR 42643; and September 18, 1981, at 46 FR 46543. The rules for the 1981–82 hunting season were determined to be "major," because the expenditures arising from these regulations exceed $100 million annually and represent a major Federal action.

An updated FRIA, focusing on waterfowl hunting, was completed by the Service on March 3, 1983. New economic information was utilized from the *1980 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* which indicated that hunters expended $633 million for migratory bird hunting in 1980. The Service estimated the expenditures for waterfowl hunting in 1980 to be $317 million (adjusted to 1981 dollars).

A Determination of Effects approved by the Assistant Secretary, Fish and Wildlife and Parks, on February 5, 1987 concluded that the hunting frameworks being proposed for 1987–88 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, the Service recently prepared an update of the 1981 Final Regulatory Impact Analysis for use in the development of the 1987–88 migratory bird hunting regulations to incorporate new economic information and waterfowl hunter activity and harvest information from the 1985/86 season. The summary of the 1987 update of the 1981 FRIA follows:

New information which can be compared to that appearing in the 1986 update of the 1981 Final Regulatory Impact Analysis (FRIA) includes estimates of the 1985 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1985–86 hunting season. The data indicate that the total 1985 fall flight of ducks and the fall flights in each flyway were predicted to be less than those of 1984. Because of the poor status of ducks, hunting regulations were estabished that reduced hunting opportunity from that permitted in the 1984–85 season. Hunter numbers, hunter days and season trips per hunter declined from the previous year. While the reduced hunting opportunity was no doubt responsible in part for the reduced hunter effort and activity, as the 1981 FRIA concluded, many non-regulatory factors also influence hunter participation.

Copies of the supplemental FRIA are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, 18th and C Streets, NW., Washington, DC 20240.

The Deparetment of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary author of the proposed rules on annual hunting regulations is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief, (202) 254–3207.

List of Subjects in 50 CFR Part 20

Hunting, Exports, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1987–88 hunting season are authorized under the Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); Alaska Game Act of 1925, 43 Stat. 739, as amended, 54 Stat. 1103–04.

Proposed 1987–88 Migratory Game Bird Hunting Regulations (Preliminary)

The following general frameworks and guidelines for hunting certain waterfowl, sandhill cranes, mourning doves, white-winged doves, white-tipped doves, Zenaida doves, scaly-naped pigeons, band-tailed pigeons, moorhens and gallinules, rails coots, common snipe, and woodcock during the 1987–88 season are proposed. Changes or possible changes, when noted, are in relation to 1986–87 final frameworks or regulations. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." All mentioned dates are inclusive. Where applicable, information is provided about proposals for change already submitted to the Service or expected to be submitted in the near future. These and the Service's responses or comments follow the frameworks being proposed. Service views on the items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later.

The proposed frameworks and guidelines, as compared to the 1986–87 final frameworks, are described below:

1. *Shooting hours.* (No change.) Basic shooting hours beginning one-half hour before sunrise and ending at sunset are proposed with the option that more restrictive shooting hours within this framework may be selected by the States or may be established for special seasons.

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.* In 1986, survey information indicated increases in the breeding indices for eight out of ten important game ducks and the Service forecasted an increased 1986 fall flight of ducks compared to that of 1985. However, the Service cautioned that the forecasted duck fall flight was the second smallest on record and the habitat and duck population improvements observed by no means represented full recovery. As a result, the Service continued various duck season framework restrictions in 1986. Pending the availability of current duck population, habitat and harvest information, and the receipt of recommendations from the four flyway councils, specific duck framework proposals for opening and closing dates, season lenghts and bag limits are deferred. Exceptions to the regular duck-season frameworks are given in various numbered items that follow.

3. *American black ducks.* (Possible change.) In 1983 a program to further restrict harvest of American black ducks was developed and initiated in cooperation with flyway councils, State wildlife agencies, and private organizations. The program's harvest restrictions were to remain in place for a period of 3–5 years to facilitate the evaluation of the effects of hunting on the status of the species. However, if the protection provided to the species by the harvest restrictions is considered inadequate, there is provision for modification of the restrictions prior to completion of the program. Alternatives were discussed in an environmental assessment, *Proposed Hunting Regulations on Black Ducks, 1983,* (available upon request to the Service).

Prior to establishment of the 1987–88 hunting regulations, the Service intends to assess the effect of the black duck harvest management program in the Atlantic and Mississippi Flyways, as well as each member State's harvest reduction strategy, in relation to achieving the goal of a 25% reduction in black duck harvest from the 1977–81 harvest level (5-year average). Those strategies that have not reached the goal will be reviewed and further restrictions considered.

4. *Wood ducks.* (No change.) In 1977 regulations for this species were changed to permit southeastern States the option of an early-October hunting season during which no special bag and possession limits applied under conventional regulations; under point system regulations, the species was placed in the mid-point category. The criteria for such seasons were described in the **Federal Register** dated May 25, 1977 (42 FR 26669), and are summarized and updated for informational purposes:

The southeastern United States is defined as Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. The Service proposes to again consider regulations aimed at additional wood duck harvest in the southeastern States only within the following guidelines:

A. In 1987, States in the southeastern United States may split their regular duck hunting season in such a way that a hunting season not to exceed 9 consecutive days occurs between October 3 and October 15.

B. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway in 1987 shall apply to wood ducks, and under the point system, the point value for wood ducks shall be reduced from the high to the mid-point category. For other species of ducks daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations.

C. In addition, the extra teal option available to States in the Atlantic and Mississippi Flyway that select conventional regulations and do not have a September teal season may be applied during the period.

D. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

E. This special provision for wood ducks shall be regarded as experimental, and subject to annual and final evaluations by participating States of population, harvest, banding, and other available information.

F. The experiment shall be conducted for a specified time period to be agreed upon between the Service and participating States.

5. *Sea ducks.* (No change.) A maximum open season of 107 days for taking scoter, eider, and oldsquaw ducks is proposed during the period between September 15, 1987, and January 20, 1988, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Altantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, islands, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia. Such areas shall be described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck sesaon conventional or point-system daily bag and possession limits.

The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. Within the special sea duck areas during the regular duck season in the Atlantic

Flyway, States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

Any State desiring its duck season to open in September must make its selection no later than August 7, 1987. Those States desiring their sea duck season to open after September may make their selection at the time they select their regular waterfowl seasons.

Additional information. New York has alerted the Service that it has submitted two proposals for changes in the regulatory frameworks for sea duck hunting to the Atlantic Flyway Council for review and recommendation. One change is to extend the framework closing-date for sea duck hunting from January 20 to January 31. The other change would permit the harvest of sea ducks during scaup-only seasons in scaup-only areas that are not designated as special sea duck hunting areas.

Response. Service consideration of New York's proposed changes is deferred pending the Atlantic Flyway Council's review and approval of same.

6. *September teal season.* (No change.) An open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois,Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Shooting hours are from sunrise to sunset daily. The season may not exceed 9 consecutive days between September 1 and September 30, 1987, with a bag limit of 4 teal daily and 8 in possession. States must advise the Service of season dates and special provisions to protect non-target species by August 7, 1987.

7. *Extra teal option.* (No change.)

A. States in the Atlantic Flyway selecting neither an early duck season in September nor the point system may select an extra teal limit of no more than 2 blue-winged or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season.

Additional information. The Service notes that the majority of the teal harvested in the Atlantic Flyway are green-winged teal and the band recovery rates for greenwings are relatively high. The Service believes the Atlantic Flyway Council should review this option as it operates in the flyway.

B. States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season.

These extra limits are in addition to the regular duck season bag and possession limits.

8. *Expermental September Duck Seasons.* Kentucky, Tennessee and Florida have conducted experimental 5-day September duck hunting seasons since 1981. In 1986 the Mississippi Flyway Council's Lower Region Regulations Committee recommended continuation of the experimental duck hunting seasons in Kentucky and Tennessee, with modifications if deemed necessary after evaluation of their final reports. The Atlantic Flyway Council recommended that the experimental duck hunting season in Florida be granted operational status. The Service noted its concern about the decrease in the survival rate of wood ducks measured by the studies in Kentucky and Tennessee, and the lack of adequate banding information needed to appraise the impacts stemming from the increased harvest of wood ducks measured by Florida's study. Several problems with regard to September duck hunting seasons were identified by the Service in the July 3, 1986, **Federal Register** (51 FR 24420). The Service stated that while September duck hunting seasons are in principle a feasible harvest management strategy, the current situation with regard to their evaluation, including the flyway-wide aspects of the management of target species, and their suitability for widespread application is under review. In the intervening period the Service continued the experimental seasons in Kentucky, Tennessee and Florida under the same regulatory provisions as provided during the study periods with the exception that in Kentucky and Tennessee the daily bag limit was restricted such that no more than 2 wood ducks could be included in the 4-duck daily bag.

The Service reaffirms the need for cooperative studies that are flyway oriented in scope to better understand and manage wood ducks. There is need to develop such programs before operational status is sought for current experimental seasons or before new experiments are initiated.

Iowa has conducted an experimental 5-day September duck hunting season since 1979. In 1986 the Upper Region Regulations Committee of the Mississippi Flyway Council recommended the experimental season be continued.

In light of the Service's concerns regarding September duck hunting seasons, as noted above, and the Upper Region's recommendation, the Service continued the experimental season in Iowa through 1986–87 under the same regulatory provisions as provided during the study period.

The Service's review, in cooperation with the flyway councils, of September duck hunting seasons continues. In interim, the Service proposes to continue the experimental September duck hunting seasons in Kentucky, Tennessee, Florida and Iowa in 1987 under the regulatory provisions provided each in 1986.

9. *Special scaup season.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

A. The Season must ocur between October 1, 1987, and January 31, 1988, all dates inclusive.

B. The season must occur outside the open season for any other ducks except sea ducks.

C. The season is limited to areas mutually agreed upon between the State and the Service prior to August 31, 1987, and

D. These areas must be described and delineated in State hunting regulations.

E. In lieu of a special scaup-only season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 boldeneyes or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to special scaup seasons elsewhere.

10. *Extra scaup option.* (No change.) As an alternative to a special scaup-only season, States in the Atlantic, Mississippi, and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions C and D listed for special scaup seasons. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

11. *Mergansers.* (No change.) States in the Atlantic and Mississippi Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The bag limit is 5 mergansers daily and 10 in possession. Elsewhere, mergansers are included within the regular daily bag and possession limits

for ducks. The restriction on hooded mergansers of 1 daily and 2 in possession is continued in the Atlantic, Mississippi, and Central Flyways.

12. *Canvasback and redhead ducks.* (No change.) Proposed seasons and bag limits for canvasbacks and redheads are unchanged from those in effect in 1986–87. In 1986 the Eastern Population of canvasbacks was below the 3-year average breeding population level identified in the environmental assessment *Proposed Hunting Regulations on Canvasback Ducks, 1983* at which closure of the hunting season on the population should be considered. It was the second straight year the population was below the minimum level. In light of this, the Service closed the season on canvasbacks in the Atlantic, Mississippi and Central Flyways. The 1987 breeding population survey data and harvest information from the 1986–87 season will be available in July. At that time the Service, in coordination with the flyway councils, will review the data and consider the hunting framworks for canvasbacks and redheads.

13. *Duck Zones.* In the March 21, 1986, **Federal Register** (51 FR 9862) the Service gave notice that it believes present duck hunting zones should not be modified and no new duck hunting zones should be initiated until some better informed judgments regarding their cumulative effect on the resource can be made. The Service intends to continue these constraints until zoning proposals are considered in the supplemental EIS scheduled for 1987.

States in all Flyways may split their waterfowl season into two segments. Previously, States in the Atlantic and Central Flyways, in lieu of zoning could split their seasons for ducks or geese into three segments. Since it is proposed that new duck zones not be authorized, a 3-way split is also not offered to States not presently utilizing that option for ducks.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.* The Canadian Wildlife Service, the four waterfowl flyway councils, State conservation agencies, and others traditionally provide population and harvest information useful in setting annual regulations for geese and brant. The midwinter survey, the past seaon's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1987 will provide additional information.

Atlantic Flyway. (No change.) Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1986–87 are anticipated at this time.

Additional information. Massachusetts has alerted the Service that it intends to request an extension of the framework closing-date for Canada goose hunting in the State and a liberalization of the Canada goose bag limit during the latter part of the hunting season. The State also indicated it was considering submitting a proposal for an experimental early (i.e. September) Canada goose hunting season.

Response. Pending the Atlantic Flyway Council's review and approval of Massachusetts' request(s), the Service's consideration of same is deferred.

The Southeastern Section of The Wildlife Society has submitted a resolution encouraging the Service and Atlantic Flyway Council to establish hunting seasons that will protect Canada goose sub-populations in the southern Atlantic Flyway.

Mississippi Flyway. (No change.) Seasons and bag limits are deferred pending receipt of additional information and recommendations. No significant changes from those in effect in 1986–87 are anticipated at this time.

Harvests of the Eastern Prairie and Mississippi Valley (MVP) Populations of Canada geese in this flyway are controlled in part by quota allocations and harvest objectives. Specific quotas will be established after population management objectives, recent population information, production information, and expected fall flights have been taken into consideration. In quota areas it is intended that the entire quota can be safely taken without detriment to the population, and that such harvests are appropriate considering population objectives. Goose seasons in quota areas end when the quota has been achieved and the season terminated by State action, emergency order under § 20.26 of 50 CFR, or when the permissible number of hunting days has expired. Specific procedural information for season closures of quota areas will be included in the final regulations.

Central Flyway. (No change.) Seasons and bag limits are deferred pending additional information and recommendations. No significant changes from those in effect in 1986–87 are anticipated at this time.

Additional information. Montana alerted the Service that it is considering separating the bag limits for dark and light geese in the Central Flyway portion of the State. The light goose limit would be 3 daily and 6 in possession and would be in addition to the dark goose limit (3 daily and 6 in possession).

Response. Service consideration of this change is deferred pending the Central Flyway Council's review and approval of same.

Pacific Flyway. (No change.) Seasons and bag limits are deferred pending additional information and recommendations. No significant changes from those in effect in 1986–87 are anticipated at this time.

Since 1984 the annual regulations frameworks have included various harvest restrictions on dusky and cackling Canada geese, Pacific Flyway white-fronted geese and Pacific brant. The Service notes there may be some additional concerns about these species this year.

Additional information. Washington has alerted the Service that it intends to reopen a limited sport hunting season on brant in the State this year. The State requested the Service reallocate the brant sport harvest among all sport hunters in the Pacific Flyway to provide for such a season in Washington if the Pacific Flyway Council fails to do so.

Response. The Service defers consideration of Washington's request pending receipt of a recommendation from the Pacific Flyway Council.

15. *Tundra Swan.* (Change.) The following frameworks for tundra swans are proposed. In Utah, Nevada, and Montana (Pacific Flyway), an open season for taking a limited number of tundra swans may be selected subject to the following conditions:

A. The season must run concurrently with the duck season;

B. In Utah, no more than 2,500 permits may be issued authorizing each permittee to take 1 tundra swan;

C. In Nevada, no more than 650 permits may be issued authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties;

D. In Montana (Pacific Flyway portion only), no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties;

Additional information. The 1986–87 frameworks provided for limited seasons on tundra swans (Eastern Population) in the Central Flyway portion of Montana, North Dakota and South Dakota, and an experimental season in North Carolina. The 1986–87 season was the final year of a 3-year experimental swan season in North Carolina. The State's final evaluation report of the study is due prior to the summer meetings (late July) of the Atlantic Flyway Technical Section and Council. Pending a review of the North Carolina experimental season, the Service defers any recommendations

concerning the harvest of Eastern Population (EP) tundra swans during the 1987–88 seasons. Guidelines to coordinate the sport harvest of EP tundra swans among the four flyways have been distributed in a draft hunt plan. One condition of EP tundra swan seasons in 1987–88 and later years will be approval by the flyway councils of the hunt plan, including harvest allocations by flyway.

16. *Sandhill cranes.* (No change.) Pending evaluation of harvest data from the 1986–87 season, seasons for hunting sandhill cranes may be selected within specified areas in Arizona, Colorado, Kansas, New Mexico, Texas, Oklahoma, North Dakota, South Dakota, Montana, and Wyoming with no substantial change in dates from the 1986–87 seasons. The daily bag limit will be 3 and the possession limit 6 sandhill cranes, except in special season areas in Arizona and Wyoming where the limit is 2 cranes per season for 200 and 250 permit holders, respectively, and in a special area in New Mexico where the limit is 3 cranes per season for 730 permit holders. The provision for a Federal sandhill crane hunting permit is continued in all the above areas except special season areas in Arizona, Wyoming and New Mexico.

Additional information. Montana alerted the Service that it was considering opening the sandhill crane hunting season in Sheridan County on the same date as the season begins in the remainder of the Central Flyway portion of the State open to sandhill crane hunting. The current frameworks for sandhill crane hunting in the Central Flyway portion of Montana provide for such a change.

17. *Coots.* (No change.) Within the regular duck season, States in the Atlantic, Mississippi, and Central Flyways may permit a daily bag limit of 15 and a possession limit of 30 coots; States in the Pacific Flyway may permit 25 coots daily and in possession, singly or in the aggregate with gallinules.

18. *Common Moorhens (formerly Common Gallinules) and Purple Gallinules.* (No change.) States in the Atlantic and Mississippi Flyways may select hunting seasons between September 1, 1987, and January 20 1988, of not more than 70 days. Central Flyway States may select hunting seasons between September 1, 1987 and January 17, 1988, of not more than 70 days. Any state may split its moorhen/gallinule season without penalty. The daily bag and possession limits may not exceed 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively. States may select moorhen/gallinule seasons at the time they select their waterfowl seasons. In this case, daily bag and possession limits will remain the same.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons within the waterfowl seasons. A moorhen/gallinule season selected by any State or portion thereof in the Pacific Flyway may be the same as but not exceed its waterfowl season, and the daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate of the two species.

19. *Rails.* (No change.) The States included herein may select seasons between September 1, 1987, and January 20, 1988, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

Clapper and king rails

A. In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag and possession limits may not exceed 10 and 20 clapper and king rails, respectively, singly or in the aggregate of these two species.

B. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, the daily bag and possession limits may not exceed 15 and 30 clapper and king rails, respectively, singly or in the aggregate of the two species.

C. The season will remain closed on clapper and king rails in all other States.

Sora and Virginia rails

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25, singly or in the aggregate of sora and Virginia rails, may be selected in States in the Atlantic, Mississippi, and Central Flyways, and portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

20. *Common snipe.* (No change.) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons between September 1, 1987, and February 28, 1988, not to exceed 107 days, except that in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia the season must end no later than January 31. Seasons between September 1, 1987, and February 28, 1988, not exceeding 93 days, may be selected in the Pacific Flyway portions of Montana, Wyoming, Colorado, and New Mexico.

All States in the Pacific Flyway, except those portions of Colorado, Montana, New Mexico, and Wyoming in the Pacific Flyway, must select their snipe season to run concurrently with their regular duck season. In these Pacific Flyway States, except portions of the four States noted previously, it will be unlawful to take snipe when it is unlawful to take ducks.

Daily bag and possession limits may not exceed 8 and 16, respectively. Any State may split its snipe season into two segments.

States or portions thereof in the Atlantic, Mississippi, and Central Flyways may defer selection of snipe seasons until they choose their waterfowl seasons in August. In that event, the daily bag and possession limits will remain the same but shooting hours must conform with those for waterfowl.

21. *Woodcock*

A. Central and Mississippi Flyways. (No change.)

States in the Central and Mississippi flyways may select hunting seasons of not more than 65 days with daily bag and possession limits of 5 and 10, respectively, to occur between September 1, 1987 and February 28, 1988. States may split their woodcock season without penalty.

B. Atlantic Flyway. (No Change.)

The number of woodcock in the Atlantic Flyway has significantly declined since the 1960s. In 1985 the Service initiated a program whereby the hunting regulations for woodcock in the Atlantic Flyway were adjusted to bring harvest opportunities to a level commensurate with the current population status. No changes in seasons and bag limits from those in effect in 1986–87 are anticipated at this time pending an evaluation of the changes implemented. For the 1987–88 hunting season in the Atlantic Flyway the Service proposes the following:

States in the Atlantic Flyway may select hunting seasons of not more than 45 days with daily bag and possession limits of 3 and 6, respectively, to occur between October 1, 1987 and January 31, 1988. States may split their woodcock season without penalty.

New Jersey may select woodcock hunting seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

22. *Band-tailed pigeons.* (no change.)

Pacific Coast States California, Oregon, and Washington and the *Nevada* counties of Carson City,

Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey. These States may select hunting seasons not to exceed 30 consecutive days between September 1, 1987, and January 15, 1988. The daily bag and possession limits may not exceed 5 band-tailed pigeons.

California may zone by selecting hunting seasons of 30 consecutive days for each of the following two zones:

A. In the counties of Alpine Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity; and

B. The remainder of the State.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1987. The daily bag and possession limits may not exceed 5 and 10, respectively. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may divide its State into a North Zone and a South Zone along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Between September 1 and November 30, 1987, in the North Zone, and October 1 and November 30, 1987, in the South Zone; hunting seasons not to exceed 20 consecutive days in each zone may be selected.

23. *Mourning doves.* States were offered an option of a season length of 70 half or full days with a daily bag and possession limit of 12 and 24, respectively, or a season length of 60 half or full days with a daily bag and possession limit of 15 and 30, respectively. States were allowed to select hunting zones without penalty and to split the season into not more than 3 time periods.

The Service proposes to offer these options again during the 1987–88 hunting season, pending results of the call-count survey and receipt of additional information and recommendations.

Between September 1, 1987, and January 15, 1988, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit: (No change.) All States east of the Mississippi River and Louisiana.

A. Shooting hours between one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 full or half days with daily bag and possession limits not to exceed 12 and 24 doves, respectively. As an alternative, seasons not exceeding 60 full or half days and limits of 15 and 30 doves, respectively, may be selected. Under either option, the season may run consecutively or be split into not more than three time periods.

C. As an option to the above, Alabama, Georgia, Illinois, Louisiana, and Mississippi may elect to zone their States as follows:

a. Two zones per State as described in 48 FR 35103.

b. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may run consecutively or be split into not more than three periods.

c. The hunting seasons in the South Zones of these States may commence no earlier than September 20, 1987.

Central Management Unit: (No change.) Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

A. Shooting hours between one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 days with daily bag and possession limits not to exceed 12 and 24 doves, respectively. As an alternative, seasons not exceeding 60 days, and limits of 15 and 30 doves, respectively, may be selected. Under either option, the season may run consecutively or be split into not more than three periods.

C. In New Mexico, daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 under the alternative), singly or in the aggregate of the two species.

D. In addition to the basic framework and the alternative, Texas may divide the State into three zones for purposes of dove hunting in accordance with zoning proposals previously approved by the Service and the Central Flyway Council. The various zones are described in 50 FR 33740.

a. The hunting seasons may be split into not more than two periods except as noted below.

b. The North and Central Zones may have seasons of not more than 70 (or 60 under the alternative) days between September 1, 1987 and January 25, 1988.

c. The South Zone may have a season of not more than 70 (or 60 under the alternative) days between September 20, 1987, and January 25, 1988. In the special white-winged dove portion of the South Zone, a limited mourning dove season may be held concurrently with the 4-day white-winged dove season and with shooting hours coinciding with those for white-winged doves. However, the remaining 66 (or 56 under the alternative) days must be within the September 20, 1987, through January 25, 1988 period.

d. The daily bag limit may not exceed 12 (or 15 under the alternative) mourning, white-winged, and white-tipped doves in the aggregate, no more than two of which may be white-winged doves nor 2 of which may be white-tipped doves; the possession limit may not exceed 24 (or 30 under the alternative) doves in the aggregate including no more than 4 white-winged and 4 white-tipped doves.

Western Management Unit: (Possible change.) Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

A. Shooting hours of one-half hour before sunrise to sunset daily.

B. Hunting seasons of not more than 70 full days with daily bag limits not to exceed 12 and 24 doves, respectively, which may run consecutively or be split into not more than three periods.

C. As an alternative, except in Arizona, seasons not exceeding 60 days and limits of 15 to 30 doves, respectively, may run consecutively or be split into not more than 3 periods.

Additional information. No change in the hunting regulations frameworks for the Western Management Unit are proposed at this time; however, the Service reiterates its statement made in the July 3, 1986, **Federal Register** (51 FR 24418) that consideration will be given to imposing regulations restrictions for the 1987–88 mourning dove seasons in the Western Management Unit if the population trend has not continued the short-term reversal evidenced in 1986.

24. *White-winged and white-tipped doves.* (No change.) Arizona, California, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1987, and daily bag limits as stipulated below.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

Nevada, in the counties of Clark and Nye, and in the *California* counties of Imperial, Riverside, and San Bernardino, the daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively, singly or in the aggregate, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession

limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, including no more than 2 mourning doves and 2 white-tipped doves; and the possession limit may not exceed 20 white-winged, mourning, and white-tipped doves in the aggregate including no more than 4 mourning doves and 4 white-tipped doves in possession.

In addition, Texas may also select a hunting season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1987, and January 25, 1988, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning, and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 (or 60 under the alternative) days to be held between September 1, 1987, and January 15, 1988, and coinciding with the mourning dove season. The daily bag limit of both species in the aggregate may not exceed 12 (or 15 under the alternative), of which not more than 4 may be whitewings. The possession limit of both species in the aggregate may not exceed 24 (or 30 under the alternative) of which not more than 8 may be whitewings.

25. *Migratory bird hunting seasons in Alaska.* (No change.) The Service proposes to allow Alaska to continue their stabilized duck hunting frameworks during the 1987–88 season.

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Alaska, 1987–88

Outside Dates: Between September 1, 1987, and January 26, 1988, Alaska may select seasons on waterfowl, snipe, and sandhill cranes, subject to the following limitations:

Shooting Hours: One-half hour before sunrise to sunset daily.

Hunting Seasons:

Ducks, geese, and brant—107 consecutive days in each of the following: North Zone (State Game Management Units 11–13 and 17–26); Gulf Coast Zone (State Game Management Units 5–7, 9, 14–16, and 10-Unimak Island only); Southeast Zone (State Game Management Units 1–4); Pribilof and Aleutian Islands Zone (State Game Management Unit 10-except Unimak Island); Kodiak Zone (State Game Management Unit 8). The season may be split without penalty in the Kodiak Zone. Exception: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State there is no open hunting season for Aleutian Canada geese, cackling Canada geese and emperor geese.

Snipe and sandhill cranes—An open season concurrent with the duck season.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, eider, oldsquaw, harlequin, and American and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6 and a possession limit of 12, of which not more than 4 daily and 8 in possession may be Greater white-fronted (white-fronted) or Canada geese, singly or in the aggregate of these species. Throughout the State there is no open hunting season for Aleutian and Cackling Canada geese and emperor geese.

Brant—A daily bag limit of 4 and a possession limit of 8.

Common snipe—A daily bag limit of 8 and a possession limit of 16.

Sandhill cranes—A daily bag limit of 3 and a possession limit of 6.

26. *Migratory game birds in Puerto Rico and in the Virgin Islands.* (No change.)

Proposed Frameworks for Selecting Open Season Dates for Hunting Migratory Birds in Puerto Rico, 1987–88

Shooting hours: Between one-half hour before sunrise and sunset daily.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between November 5, 1987, and February 28, 1988, Puerto Rico may select hunting seasons as follows.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens (common gallinules), and common snipe. The season may be split into 2 segments.

Daily Bag and Possession Limits:

Ducks—Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck *(Oxyura jamaicensis);* White-cheeked pintail *(Anas bahamensis);* West Indian whistling (tree) duck *(Dendrocygna arborea);* fulvous whistling (tree) duck *Dendrocygna bicolor), and the masked duck (Oxyura dominica),* which are protected by the Commonwealth of Puerto Rico.

Coots—There is no open season on coots, i.e., common coots *(Fulica americana)* and Caribbean coots *Fulica caribaea).*

Common Moorhens—Not to exceed 6 daily and 12 in possession, except that the season is closed on purple gallinules *(Porphyrula martinica).*

Common snipe—Not to exceed 6 daily and 12 in possession.

Closed Areas: No open season for ducks, moorhens and gallinules, and snipe is prescribed in the Municipality of Culebra and on Desecheo Island.

Doves and pigeons

Outside Dates: Puerto Rico may select hunting seasons between September 1, 1987, and January 15, 1988, as follows:

Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the following areas:

Municipality of Culebra and Desecheo Island—closed under Commonwealth regulations.

Mona Island—Closed to protect the reduced population of white-crowned pigeon *(Columba leucocephala),* known locally as "Paloma cabeciblanca."

El Verde Closure Area—Consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) all lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north,

to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one (1) kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public. The purpose of this closure is to afford protection to the Puerto Rican parrot *(Amazona vittata)* presently listed as an endangered species under the Endangered Species Act of 1973.

Cidra Municipality and Adjacent Closure Areas consisting of all of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the Municipality of Cidra on the west edge, north to Highway 156, eash on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning. The purpose of this closure is to protect the Plain (Puerto Rican plain) pigeon *(Columba inornata wetmorei)*, locally known as "Paloma Sabanera," which is present in the above locale in small numbers and is presently listed as an endangered species under the Endangered Species Act of 1973.

Proposed Framework for Selecting Open Season Dates For Hunting Migratory Birds in the Virgin Islands, 1987–88

Shooting Hours: Between one-half hour before sunrise and sunset daily.
Outside Dates: Between December 1, 1987, and January 31, 1988, the Virgin Islands may select a duck hunting season as follows.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag and Possession Limits: Not to exceed 4 daily and 8 in possession, except that the season is closed on the ruddy duck (*Oxyura jamaicensis*); White-cheeked pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*), and the masked duck (*Oxyura dominica*).

Doves and Pigeons

Outside Dates: The Virgin Islands may select hunting seasons between September 1, 1987, and January 15, 1988, as follows:

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove (*Zenaida aurita*)—mountain dove.

Bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected).

Common Ground-dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon (*Columba squamosa*)—red necked pigeon, scaled pigeon.

27. *Migratory game bird seasons for falconers.* (No change.)

Proposed Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during regular hunting seasons and extended falconry seasons.

Regulating Publications: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season, or falconry season) exceed 107 days for a species in one geographical area.

28. *Hawaii mourning doves.* (No change.) The mourning dove is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be taken in Hawaii in accordance with regulations set by the State of Hawaii as has been done in the past and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1987, and January 15, 1988, the length may not exceed 60 (or 70 under the alternative) days; and the daily bag and possession limits may not exceed 15 and 30 (or 12 and 24 under the alternative) doves, respectively. Other applicable Federal regulations relating to migratory game birds shall also apply.

29. *Migratory Bird Hunting on Indian Reservations.* In the September 3, 1985, **Federal Register** (50 FR 35762) the Service implemented interim guidelines for migratory bird hunting regulations on Federal Indian reservations and ceded lands, and established special hunting regulations for certain tribes in the 1985–86 and 1986–87 hunting seasons. The Service intends to employ the guidelines and establish special migratory game bird hunting regulations for interested Indian tribes in 1987–88; however, the comment period on the guidelines remains open. In the January 16, 1987, **Federal Register** (52 FR 1942), the Service published a notice requesting proposals from Indian tribes that wish to establish special 1987–88 migratory game bird hunting regulations be submitted no later than June 10, 1987. In a later **Federal Register** document the Service will publish for public review the pertinent details of proposals received from tribes.

Dated: February 26, 1987.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–5452 Filed 3–12–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Regulations Governing the Taking and Importing of Marine Mammals

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

ACTION: Notice of availability of recommended decision and opportunity to comment.

SUMMARY: Public hearings were held by an Administrative Law Judge (ALJ) in Seattle, Washington, on December 1–7, 1986, concerning the Application of the Federation of Japan Salmon Fisheries Cooperative Association (Federation) for a general permit under the Marine Mammal Protection Act of 1972 to allow the taking of marine mammals incidental to this commercial fishery. The ALJ issued a recommended decision in this matter on March 6, 1987, recommending that the five year permit be issued to the Federation to take annually, within the U.S. Exclusive Economic Zone up to 1,750 Dall's porpoise from the western North Pacific stock and 45 northern fur seals from the Commander Island stock. The ALJ further recommended that the Dall's porpoise quota be decreased by five percent each year over the life of the permit. Additionally conditions for the permit were suggested in the decision. The recommended decision is available for public inspection and, in accordance with NOAA regulations at 50 CFR 216.89, public comment.

DATES: Comments on the recommended decision must be received at the address below on or before April 2, 1987.

ADDRESS: Assistant Administrator for Fisheries, NMFS, Washington, DC 20235. Attn: F/M4.

The recommended decision may be reviewed at the following NMFS Offices:

Office of Protected Species and Habitat Conservation, 1825 Connecticut Avenue, NW., Washington, DC

Office of the Director, Northwest Region, 7600 Sand Point Way, NE., Seattle, WA

Office of the Director, Alaska Region, 709 W. 9th Street, Juneau, AK

FOR FURTHER INFORMATION CONTACT: Michael Gosliner, 202–673–5206 or Kenneth Hollingshead, 202–673–5351.

Dated: March 9, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 87–5477 Filed 3–12–87; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 49
Friday, March 13, 1987

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

Associated Electric Cooperative, Inc.; Environmental Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Reaffirmation of a Finding of No Significant Impact by REA as published in the **Federal Register** on November 19, 1986, regarding the planned 345 kV transmission line between the Flint Creek Power Plant in Benton County, Arkansas, and the Morgan Substation in Polk County, Missouri, and related facilities.

SUMMARY: The Rural Electrification Administration (REA) prepared an Environmental Assessment (EA) and reached a Finding of No Significant Impact (FONSI) with respect to a proposed 345 kV transmission line in northwestern Arkansas and southwestern Missouri on November 7, 1986. The FONSI was issued as a result of a request for financing assistance from Associated Electric Cooperative, Inc. (AECI), of Springfield, Missouri. AECI plans to own a 49 mile share of a 135 mile, 345 kV transmission line to be constructed between the Flint Creek Generating Station in Benton County, Arkansas, and the Morgan Substation in Polk County, Missouri. Three other electric utilities plan to own portions of the project.

REA's FONSI determination was published in the **Federal Register** on November 19, 1986 (Volume 51, No. 223, P. 4185). Copies of the EA and FONSI were made available for public review. Pursuant to REA regulations, notices similar to REA's **Federal Register** notice were published in newspapers with general circulation in counties which the proposed transmission line would traverse.

The comment period ended on January 25, 1987, 45 days after the date of the latest published newspaper notice. All comments received after the closing date and up to the preparation of this notice were considered by REA.

Approximately 120 letters were received from private citizens, State and Federal agencies. A summary of REA's analysis of these comments is available upon request. REA is sending the summary of comments to all commentators providing return addresses. Additional requests for this summary should be directed to Mr. Frank W. Bennett, Director, Southeast Area—Electric, Room 0256, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250.

Based upon its review of all comments received, REA has determined that the environmental issues were adequately addressed in reaching its FONSI determination and that no new significant environmental concerns were brought to REA's attention during the comment period. REA is proceeding to take actions necessary to consider the financing assistance requested by AECI for construction of its share of the project.

Dated: March 9, 1987.

Harold V. Hunter,

Administrator.

[FR Doc. 87-5409 Filed 3-12-87; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Kanaranzi-Little Rock Watershed, MN, Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500), and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Kanaranzi-Little Rock Watershed, Nobles and Rock Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: Gary R. Nordstrom, State Conservationist, Soil Conservation Service, 200 Federal Building & U.S. Courthouse, 316 N. Robert Street, St. Paul, MN 55101—Telephone (612) 290-3675.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional or national impacts on the environment. As a result of these findings, Gary R. Nordstrom, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns soil erosion, sediment damage and a plan for watershed protection. The planned works of improvement include conservation tillage, contour farming, terraces, grassed waterways or outlets, water and sediment control basins, field borders, pasture and hayland planting, tree planting, and accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gary Nordstrom, SCS, St. Paul, MN.

No administrative action on implementation of the proposal will be taken until 30 days after the date of the publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: March 6, 1987.

Gary R. Nordstrom,

State Conservationist.

[FR Doc. 87-5371 Filed 3-12-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 342]

Approval for Expansion of Foreign-Trade Zone No. 112, El Paso County, Colorado, Adjacent to the Colorado Springs Station of the Denver Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Colorado Springs Foreign-Trade Zone, Inc., Grantee of the Foreign-Trade Zone No. 112, has applied to the Board for authority to expand its general-purpose zone to add acreage at the Colorado Center zone site, El Paso County, Colorado, adjacent to the Colorado Springs Station of the Denver Customs port of entry;

Whereas, the application was accepted for filing on September 12, 1985, and notice inviting public comment was given in the **Federal Register** (Docket No. 32–85, 50 FR 40044, 10/1/85);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Colorado Springs area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed September 12, 1985. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 3rd day of March 1987.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. DuPonte,

Executive Secretary.

[FR Doc. 87–5481 Filed 3–12–87; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 344]

Approval for Expansion of Foreign-Trade Zone No. 112, St. Louis County, MO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the St. Louis County Port Authority, Grantee of Foreign-Trade Zone No. 102, has applied to the Board for authority to expand its general-purpose zone to include a warehouse site in Woodson Terrace, Missouri, adjacent to the Lambert St. Louis International Airport, within the St. Louis Customs port of entry;

Whereas, the application was accepted for filing on January 28, 1986, and notice inviting public comment was given in the **Federal Register** (Docket No. 5–86, 50 FR 6016, 2/19/86);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the St. Louis area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed January 28, 1986. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 3rd day of March 1987.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. DuPonte,

Executive Secretary.

[FR Doc. 87–5482 Filed 3–12–87; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as definded in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than March 31, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March, for the following periods:

Antidumping Duty Proceeding and Period

Brass Fire Protection Equipment from Italy
03/01/86–02/28/87
Certain Iron Construction Castings from Canada
10/21/85–02/28/87
Television Receivers from Japan
03/01/86–02/28/87
Circular Welded Pipes and Tubes from Thailand
10/01/85–02/28/87
Ferrite Cores from Japan
03/01/86–02/28/87
Rayon Staple Fiber from Finland

03/01/86–02/28/87
Rayon Staple Fiber from France
03/01/86–02/28/87
Chloropicrin from the People's Republic of China
03/01/86–02/28/87
Canned Bartlett Pears from Australia
03/01/86–02/28/87
Sodium Nitrate from Chile
03/01/86–02/28/87

Countervailing Duty Proceeding and Period

Leather Wearing Apparel from Argentina
01/01/86–12/31/86
Textile Mill Products and Apparel from Argentina
01/01/86–12/31/86
Certain Castor Oil Products from Brazil
01/01/86–12/31/86
Cotton Yarn from Brazil
01/01/86–12/31/86
Frozen Concentrated Orange Juice from Brazil
01/01/86–12/31/86
Certain Tool Steel Products from Brazil
01/01/86–12/31/86
Certain Textile Mill Products and Apparel from Colombia
01/01/86–12/31/86
Certain Iron-Metal Construction Castings from Mexico
01/01/86–12/31/86
Certain Textile Mill Products from Mexico
01/01/86–12/31/86
Cotton Shop Towels from Pakistan
01/01/86–12/31/86
Certain Textile Mill Products and Apparel from Peru
01/01/86–12/31/86
Ferrochrome from South Africa
01/01/86–12/31/86
Certain Textile Mill Products and Apparel from Sri Lanka
01/01/86–12/31/86
Certain Apparel from Thailand
01/01/86–12/31/86
Certain Textile Mill Products from Thailand
01/01/86–12/31/86
Certain Welded Carbon Steel Pipe and Tube Products from Turkey
10/21/85–12/31/86

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985. Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by March 31, 1987.

If the Department does not receive by March 31, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period indentified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 9, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–5483 Filed 3–12–87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 87–101. Applicant: Case Western Reserve University, 2220 Circle Drive, Cleveland, OH 44106. Instrument: Fluorescence Lifetime Instrument. Manufacturer: Edinburgh Instruments Ltd., United Kingdom. Intended use: The instrument is intended to be used to measure excited state lifetimes on the nanosecond and microsecond time scales, decays of fluoresence anisotropy, and time-resolved fluoresence spectra. The materials involved will be proteins or peptides. In addition, luminescence measurements will be made on lanthanide ion complexes with proteins and peptides. In general, the objective of the research will be detailed characterization of structure and motion of the fluorescing chromophores. Such information will in turn suggest how proteins function in blood coagulation, in intermediary metabolism and in controlling the growth and differentiation of nervous tissue. The instrument will also be used for training in operation of the lifetime instrument. Application received by Commissioner of Customs: February 11, 1987.

Docket number: 87–102. Applicant: Case Western Reserve University, 10900 Euclid Avenue, Cleveland, OH 44106–1712. Instrument: FTI Spectrophotometer, Model DA3.10. Manufacturer: Bomem Inc., Canada. Intended use: The instrument is intended to be used for studies of silane coupling agents, corrosion inhibitors, and resin coating materials such as polyimides. Experiments will be conducted with the aim of developing a new surface infrared spectroscopic technique which far surpasses the sensitivity of the previously existing techniques. Another important objective of the study is to obtain a better understanding of the molecular structure of polymer films on metallic and semiconductor substrates. Application received by Commissioner of Customs: February 11, 1987.

Docket number: 87–103. Applicant: University of Rochester, 70 Goler House, Rochester, NY 14620. Instrument: Mass Spectrometer, Model SIRA 12 with Accessories. Manufacturer: VG Instruments Inc., United Kingdom. Intended use: this instrument is intended to be used to measure isotopic abundance in gas and tissue samples in the study of the metabolism of various substrates and measurement of the tissue protein synthesis rate in man. These studies involve the investigation of the effect of various disease processes and hormones on protein and energy metabolism in man. Application received by Commissioner of Customs: February 13, 1987.

Docket number: 87–104. Applicant: Boston University, Department of Chemistry, 390 Commonwealth Avenue, Boston, MA 02215. Instrument: Rapid Kinetics Accessory for UV-Visible Spectrophotometer, Model SFA–11. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended use: During studies of rates of reactions, the instrument will allow two solutions to be mixed very rapidly, thus enabling one to observe the changes in optical absorbance very soon after mixing occurs. Applications received by Commissioner of Customs: February 13, 1987.

Docket number: 87–105. Applicant: University of Texas at Austin, Department of Chemistry, Austin, TX 78716. Instrument: CD and LD Spectropolarimeter, Model J–600. Manufacturer: Jasco Inc., Japan. Intended use: The instrument will be used to study the linear, circular and magnetic circular dichroism of organic molecules prepared by a variety of methods. Application received by

Commissioner of Customs: February 19, 1987.

Docket number: 87–106. Applicant: Woods Hole Oceanographic Institution, Department of Geology & Geophysics, Woods Hole, MA 02543. Instrument: Deep-Towed Pressure Compensated Boomer Seismic System. Manufacturer: Huntec 70 Ltd., Canada. Intended use: Study of the seabed of the contintental shelf and slope with extremely high-resolution seismic reflection profiles. The experiments to be conducted consist of recording lines of reflection profiles to produce detailed maps of the seafloor and subsurface with the best possible characterization of interface geometry and reflectivity and of subsurface layer thicknesses. Application received by Commissioner of Customs: February 19, 1987.

Docket number: 87–107. Applicant: Goucher College, Dulaney Valley Road, Towson, MD 21204. Instrument: Circular Dichroism Spectropolarimeter, Model J–600A with Accessories: Manufacturer: Jasco International Company Ltd., Japan. Intended use: Stopped flow circular dichroism studies of the Z—B transition caused by porphyrins and metalloporphyrins in the UV region of the nucleic acid and in the visible region of the porphyrin. These studies will be conducted utilizing Cobalt (III) hexamine and alcohol to convert the nucleic acid to the Z form (left-handed form of DNA). In addition, the instrument will be used for educational purposes in the courses Chemistry Independent Research—391 and Instrumental Methods of Analysis—350. Application received by Commissioner of Customs: February 20, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–5484 Filed 3–12–87; 8:45 am]

BILLING CODE 3510–DS–M

Hunter College CUNY et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–058. Applicant: Hunter College CUNY, New York, NY 10021. Instrument: Electron Microscope, Model H–600 with Accessories. Manufacturer: Nissei Sangyo, Japan. Intended use: See notice at 51 FR 45793, December 22, 1986. Instrument ordered: July 2, 1986.

Docket Number: 87–067. Applicant: Thomas Jefferson University, Philadelphia, PA 19107. Instrument: Electron Microscope, Model H–7000 with accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: See notice at 52 FR 1649, January 15, 1987. Instrument ordered: May 19, 1986.

Docket Number: 87–068. Applicant: Michigan State University, East Lansing, MI 48824. Instrument: Electron Microscope, Model CM 10/PC with Accessories. Manufacturer: Philips Electronic Instruments, The Netherlands. Intended use: See notice at 52 FR 2125, January 20, 1987. Instrument Ordered: September 10, 1986.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. REASONS: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–5485 Filed 3–12–87; 8:45 am]

BILLING CODE 3510–DS–M

VA Medical Center et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 87–011R. Applicant: VA Medical Center, Warehouse Building # 4, 3900 Loch Raven Boulevard, Baltimore, MD 21218. Instrument: Electron Microscope, Model JEM–1200 EX/SEG with Accessories. Manufacturer: JEOL, Japan. Intended Use: The instrument is intended to be used for electron microscopic examination of tissues which is necessary for the care and treatment of patients in clinical research protocols. For example, clinical oncology patients are evaluated by a number of diagnostic criteria, including electron microscopy examination of these tissues and assigned randomly to experimental therapeutic protocols. The instrument will also be used for the training of pathology residents and for providing materials for intradepartmental education programs. Original application received by Commissioner of Customs: September 15, 1986.

Docket number: 87–095. Applicant: North Carolina State University, Box 7908, Raleigh, NC 27695–7908. Instrument: Hot Press Asembly. Manufacturer: NRD Corporation, Japan. Intended Use: The instrument is intended to be used to conduct basic research on structural materials such as: (1) The compaction of powders of a variety of materials over wide ranges of pressures and temperatures and (2) the experimental investigation of hot or cold-forming of structural components by uniaxial compression on the order of 6" in diameter and pressures on the order of 10–50 ksi. Application received by Commission of Customs: February 10, 1987.

Docket number: 87–096. Applicant: Department of the Interior, U.S. Geological Survey-Western Region, 345 Middlefield Road, MS–285, Menlo Park, CA 94025. Instrument: Borehole Tensor Strainmeter. Manufacturer: University of Queensland, Australia. Intended Use: The instrument is intended to be used to monitor the deformation of the earth surfact in 200–1000m boreholes in California for the purpose of earthquake prediction research. Application received by Commissioner of Customs: February 10, 1987.

Docket number: 87–097. Applicant: U.S. Geological Survey, Building 2101, NSTL, MS 39529. Instrument: Sediment Sampler and Concentrator. Manufacturer: Envirodate Ltd., Canada. Intended Use: The instrument is intented to be used for the study of suspended sediments in rivers and lakes. Studies will be conducted to evaluate the instrument as a suspended sediment field dewatering device and compare its operation with other instruments such

as cross flow filters. If it is found to be acceptable, the instrument will be used to dewater and concentrate suspended sediment in the field. Application received by Commissioner of Customs: February 10, 1987.

Docket number: 87–098. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: Electron Microscope, Model JEM–2000FX/SID/DP with Accessories. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for study of all solid state materials, in particular, metals, ceramics, semiconductors, and new novel combinations. Experiments will include the atomic arrangement, defect and chemistry characterization of each material. In addition, the instrument will be used to provide students at the MS or PhD level with a fundamental background in transmission microscopy and associated analytical methods and to provide training in independent research. Application received by Commissioner of Customs: February 10, 1987.

Docket number: 87–099. Applicant: USDA/ARS Beltsville Agricultural Research Center, Plant Hormone Laboratory, Building 050, HH4, BARC-West, Beltsville, MD 20705. Instrument: GC/Mass Spectrometer, Model MS 25RFA with Data System. Manufacturer: Kratos Analytical, United Kingdom. Intended Use: The instrument is intended to be used for investigations of the chemistry, biochemistry and bio-activity of natural plant growth substances and phytohormones. Integral parts of this research involve the detection, quantitation and structural determination of these compounds at trace levels. In addition, the instrument will be used to provide graduate students in Advanced Plant Biochemistry laboratory training in quantitative mass spectrometry. Application received by Commissioner of Customs: February 11, 1987.

Docket number: 87–100. Applicant: Thomas Jefferson University, Division of Medical Genetics, 1100 Walnut Street, Philadelphia, PA 19107. Instrument: Genetic Analyzer, Model Cytoscan 110. Manufacturer: Shandon Southern Products, United Kingdom. Intended Use: The instrument is intended to be used for research into the possibility of a new and non-invasive method of early detection of birth defects. Application received by Commissioner of Customs: February 11, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–5486 Filed 3–12–87; 8:45 am]

BILLING CODE 3510–DS–M

National Technical Information Service

Intent To Amend an Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to amend an exclusive patent license granted to SmithKline and French Laboratories, having a place of business at 1500 Spring Garden Street, Philadelphia, PA 19101 on September 9, 1986. Notice of intent to grant the exclusive license was published in the **Federal Register** on February 7, 1985, Volume 50, No. 26, page 5289. NTIS intends to amend this license by including a related invention "Protective Synthetic Peptide Against Malaria and Encoding Gene," U.S. Patent Application S.N. 6–766,464, filed November 19, 1985. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended amendment will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The subject license may be amended unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that intended amendment would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87–5489 Filed 3–12–87; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Products From the Republic of the Philippines

March 11, 1987.

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 March 16, 1987. For further information contact Eve Anderson, 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 or call (202) 535–6735. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

On December 30, 1986, notices were published in the **Federal Register** (51 FR 47049) which established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the three-month period which began on January 1, 1987 and extends through March 31, 1987.

During recent negotiations the Governments of the United States and the Republic of the Philippines establishes a new bilateral agreement concerning trade in cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel for the period which began on January 1, 1987 and extends through December 31, 1991. The new bilateral agreement, effected by exchange of diplomatic notes dated March 4, 1987, establishes individual limits within Group I consisting of specific limits for Categories 331, 333/334, 335, 336, 337/637, 338/339, 340/640, 341/641, 342/642, 345, 347/348, 351/651, 352/652, 359–I, 369–S, 431, 433, 443, 445/446, 447, 604, 631, 633, 634, 635, 636, 638/639, 643, 645/646, 647/648, 649, 650, 659–I, 659–H; and, Group II, consisting of all Categories which do not have specific limits under the new agreement, which include Categories 300–320, 330, 332, 349, 350, 353, 354, 359–O, 360–363, 369–O, 400–429, 432, 434–442, 444, 448–459, 464–469, 600–603, 605–627, 630–632, 644, 653, 654, 659–O, 665–670 and 831–859, produced or manufactured in the Philippines and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

In the letter below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry for consumption of cotton, wool, man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the foregoing categories in excess of the designated limits.

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.

A description of the 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 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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of the Textile Agreements

March 11, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 22, 1986 issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for the consumption of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Philippines and exported during the period which began January 1, 1987 and extends through March 31, 1987.

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 further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of March 4, 1987 between the Governments of the United States and the Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective March 16, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool man-made fiber textiles and textile products, and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the period which began January 1, 1987 and extends through December 31, 1987 in excess of the following restraint limits:

Category	12-mo restraint limit Jan. 1 to Dec. 31, 1987 [1]
Group I	
331	750,000 dozen pairs.
333/334	130,000 dozen of which not more than 20,000 dozen shall be in Category 333.
335	100,000 dozen.
336	330,000 dozen.
337/637	1,100,000 dozen.
338/339	1,000,000 dozen.
340/640	600,000 dozen of which not more than 330,000 dozens shall be made from fabrics with two or more colors in the warp and/or filling in Category 340-YD/640-YD.[2]
341/641	580,000 dozen.
342/642	275,000 dozen.
345	93,500 dozen.[3]
347/348	1,000,000 dozen.
351/651	300,000 dozen.
352/652	1,200,000 dozen.
359-I [4]	780,000 dozen.
369-S [5]	950,000 pounds.
431	151,500 dozen pairs.
433	2,983 dozen.
443	3,006 dozen.
445/446	24,638 dozen.
447	6,850 dozen.
604	2,221,647 pounds.
631	2,450,000 dozen pairs.
633	15,000 dozen.
634	180,000 dozen.
635	305,312 dozen.
636	860,000 dozen.
638/639	1,130,000 dozen.
643	40,000 dozen.
645/646	500,000 dozen.
647/648	600,000 dozen.
649	4,261,365 dozen.
650	51,900 dozen.
659-I [6]	2,500,000 dozen.
659-H [7]	1,200,000 pounds.
Group II	
Categories 300-320, 330, 332, 349, 350, 353, 354, 359-O [8], 360-363, 369-O [9], 400-429, 432, 434-442, 444, 448-459, 464-469, 600-603, 605-627, 630-632, 644, 653, 654, 659-O [10], 665-670 and 831-859.	67,203,834 square yards equivalent.

[1] The charges to the limits will be adjusted to account for any imports exported after December 31, 1986 and imported through the effective date of this directive.

[2] In Category 340/640 made from fabrics with two or more colors in the warp and/or filling in TSUSA numbers 381.0522, 381.5637, 381.5610, 381.5625, 381.5660, 381.5500, 381.3132, 381.3142, 381.3152, 381.9535, 381.9547 and 381.9550.

[3] The base limit is 85,000 dozen. This category has been adjusted to reflect an additional 10% made available for hand-crocheted sweaters.

[4] In Category 359, only TSUSA number 384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.5162, 384.5163, 384.5167, 384.5169, 384.5172, 384.3451, 384.3452, 384.3453 and 384.3454.

[5] In Category 369, only TSUSA number 366.2840.

[6] In Category 659, only TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359 and 384.9365.

[7] In Category 659, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

[8] In Category 359, all TSUSA numbers except those listed in footnote 4.

[9] In Category 369, all TSUSA numbers except those listed in footnote 5.

[10] In Category 659, all TSUSA numbers except those listed in footnotes 6 and 7.

The bilateral agreement also establishes certain conversion factors used in calculating square yards equivalent. The following are the merged-category and part-category conversion factors:

Category:	*Conversion factor*
333/334	41.30
337/637	23.00
338/339	7.20
340/640	24.00
341/641	14.50
342/642	17.80
347/348	17.80
351/651	52.00
352/652	13.50
359-I	8.00
445/446	14.88
638/639	15.50
645/646	36.80
647/648	17.80
659-I	13.57

The 1987 levels are subject to adjustment according to the provisions of the Bilateral Textile Agreement of March 4, 1987 which provides, in part, that: (1) During any agreement year, the Group II limit may be exceeded by not more than 7 percent, provided a corresponding reduction is made in one or more specific limit in Group I; (2) specific limits or sublimits may be exceeded by not more than 7 percent, provided a corresponding reduction is made to another specific limit and/or to the Group II limit; (3) the Group II limit and any specific limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category or group limit; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of the 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), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above drections, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-5544 Filed 3-12-87; 8:45]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Activities for Conversion To Contract

ACTION: Notice.

The Air Force recently determined that the Automated Command and Control Executive Support System at Offutt Air Force Base (AFB), Nebraska will be reviewed for conversion to contract.

For further information contact Capt Jerdan, HQ AFCC/XPMQA, Scott AFB, Illinois, telephone (618) 256-5255.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-5491 Filed 3-12-87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Partially 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: 6-7 April 1987

Time:

0800-1730, 6 April 1987, Closed

0800-1130, 7 April 1987, Open

1245-1530, 7 April 1987, Closed

Place: Fort Bliss, Texas

Agenda: The Army Science Board's Ad Hoc Subgroup on Water Supply and Management on Western Installations will meet. This will be the second meeting of the group. The group will study missions and planning processes of Fort Bliss and White Sands Missile Range in light of the current and projected water supplies. The group will also meet with state and local water officials. The open portion of the meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are 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 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. 87-5492 Filed 3-12-87; 8:45 am]

BILLING CODE 3710-08-M

USAF Scientific Advisory Board; Meeting

March 4, 1987.

The Spring General Membership of the USAF Scientific Advisory Board will be held at Eglin AFB, FL on April 21, 1987 from 2:00 pm to 5:00 pm and on April 22-23, 1987, from 8:00 am to 5:00 pm each day.

The purpose of the meeting will be to provide SAB members briefings and displays on the latest developments in "smart weapons" programs and requirements.

This meeting will involve discussions of classified defense 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) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-5490 Filed 3-12-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Meeting; National Advisory Council on Education Research and Improvement

AGENCY: National Advisory Council on Education Research and Improvement, Department of Education.

ACTION: Full Council Meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Education Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: April 3, 1987.

ADDRESS: The Council will meet on April 3 from 9 a.m. to 1 p.m. in Room 302 of the Sumner School at 1201 17th Street, NW., Washington, DC 20036. From 2:30 p.m. to 4 p.m. Council Members will be taking a tour of the U.S. Department of Education Research Library and witnessing a demonstration of the Automated Information Management System at the Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 2000 L Street, NW., Suite 617 B, Washington, DC 20036, (202) 254-7490.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the General Education Provisions Act (20 U.S.C. 1221e); Department of Education organization plan implemented pursuant to section 413 of Pub. L. 96-88 and notice to Congress dated July 2, 1985. The Council is established to advise the Secretary of Education on policies and priorities for the Office of Educational Research and Improvement (OERI), and to review the conduct of OERI and to advise the Secretary of Education and the Assistant Secretary for OERI on the development of programs to be carried out by OERI.

Meetings of the Council are open to the public. The agenda for April 3 includes reports from Council Members on the April 2 conference "Private Sector Initiatives in Educational Reform" and their site visits, a report by Dr. Robert Leestma on the Japan Study, and a tour hosted by Dr. Ann Swift of the U.S. Department of Education Research Library as well as a demonstration of the Automated Information Management System at the Office of Educational Research and Improvement.

Records are kept of all Council Proceedings and are available for public inspection at the office of the National Advisory Council on Educational Research and Improvement, 2000 L Street, NW., Suite 617 B, Washington,

DC 20036, from the hours of 9 a.m. to 5 p.m., Monday through Friday.

Dated: March 10, 1987.

Mary Grace Lucier,

Executive Director.

[FR Doc. 87-5487 Filed 3-12-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87-08-NG]

Natural Gas Imports, American Hunter Exploration Ltd.; Application To Import Natural Gas From Canada for Short-Term and Spot Sales

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 9, 1987, of an application from American Hunter Exploration Ltd. (American Hunter), a wholly-owned subsidiary of Canadian Hunter Exploration Ltd. (Canadian Hunter), for blanket authorization to import Canadian natural gas for short-term sales in the domestic spot market. Authorization is requested to import up to 400 MMcf of Canadian natural gas per day and a maximum of 300 Bcf over a two-year term beginning on the date of first delivery of the import. American Hunter proposes to purchase the volumes of natural gas from its affiliate, Canadian Hunter, and from other Canadian suppliers for its own account or for others, and to resell those imported volumes on the short-term or spot market to purchasers in the U.S.

American Hunter proposes to submit quarterly reports giving details of individual transactions in the month following each calendar quarter. American Hunter intends to use existing facilities for transportation of the gas.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protest, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than April 13, 1987.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9622

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedure

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., April 13, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of American Hunter's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. 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, March 6, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-5399 Filed 3-12-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-11-NG]

Thermal Exploration, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on February 24, 1987, of an application from Thermal Exploration, Inc. (Thermal), for blanket authorization to import, for its own account or the account of others, Canadian natural gas for short-term and spot market sales to customers in the United States. Authorization is requested to import up to 100 MMcf per day for a two-year period beginning on the date of the first

delivery. Thermal, a Washington corporation, is a wholly owned subsidiary of Washington Energy Company. Thermal proposes to purchase natural gas from various Canadian suppliers for itself, or as agent for others, on a short-term basis for resale to pipelines, distribution companies, and end users in the United States. Thermal intends to use existing pipeline facilities for the transportation of the proposed imports. Thermal also states that it will advise the ERA of the date of first delivery of the import and submit quarterly reports giving details of individual transactions in the month following each calendar quarter.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than April 13, 1987.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8162

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: Thermal requests, in light of recent similar authorizations, that its application be considered on an expedited basis. An ERA decision on Thermal's request, particularly with respect to whether additional comments or other procedures will be necessary in this case, will not be made until responses to this notice have been received.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., April 13, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Thermal's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. 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, March 6, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–5400 Filed 3–12–87; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–C&E–87–13; OFP Case No. 52164–2953–26, 27–22]

Order Granting Oklahoma Gas and Electric Co. Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting exemption.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Mustang Station, operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permament peakload exemption under 10 CFR § 503.41 for two simple-cycle combustion turbine generators with a maximum capacity of 82.8 MW each. Mustang Station is located in Oklahoma City, Oklahoma.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed peaking gas turbines at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on May 12, 1987.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A–113, Washington, DC 20585, Telephone (202) 586–6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4'00 p.m, except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use natural gas or oil as a primary energy source in its Mustang facility's simple-cycle combustion turbine installations.

In accordance with the procedural requirements of FUA and 10 CFR § 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on January 6, 1987, (51 FR 454), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of the OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed February 20, 1987. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed units will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed units, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E permanent exemptions for the peakload powerplants to be installed at its facility in Oklahoma City, Oklahoma, permitting the use of natural gas or oil as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on March 4, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–5401 Filed 3–12–87; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–C&E–87–08; OFP Case No. 52164–2947–21, 22–22]

Order Granting Oklahoma Gas and Electric Co. Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting exemption.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Arbuckle Station, operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR § 503.41 for two simple-cycle combustion turbine generators with a maximum capacity of 82.8 MW each. Arbuckle Station is located in Sulphur, Oklahoma.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed peaking gas turbines at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on May 12, 1987.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6A–113; Washington, DC 20585, Telephone (202) 586–6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m, except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has

been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use natural gas or oil as a primary energy source in its Arbuckle facility's simple-cycle combustion turbine installations.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on January 6, 1987, (51 FR 453), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of the OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed February 20, 1987. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed units will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed units, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E permanent exemptions for the peakload powerplants to be installed at its facility in Sulphur, Oklahoma, permitting the use of natural gas or oil as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on March 4, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-5402 Filed 3-12-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-09; OFP Case No. 52164-2956-26, 27, 28, 29, 30-22]

Order Granting Oklahoma Gas and Electric Co. Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order granting exemption.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Seminole Station, operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR § 503.41 for five simple-cycle combustion turbine generators with a maximum capacity of 82.8 MW each. Seminole Station is located in Konawa, Oklahoma.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed peaking gas turbines at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on May 12, 1987.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room 6A-113, Washington, DC 20585, Telephone (202) 586-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m, except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use natural gas or oil as a primary energy source in its Seminole facility's simple-cycle combustion turbine installations.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on January 6, 1987, (51 FR 452), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of the OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed February 20, 1987. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed units will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating

unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed units, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E permanent exemptions for the peakload powerplants to be installed at its facility in Konawa, Oklahoma, permitting the use of natural gas or oil as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR § 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on March 4, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-5403 Filed 3-12-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-10; OFP Case No. 52164-2951-25, 26-22]

Order Granting Oklahoma Gas and Electric Company Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Granting Exemption.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Horseshoe Station, operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) Prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permament peakload exemption under 10 CFR 503.41 for two simple-cycle combustion turbine generators with a maximum capacity of 82.8 MW each. Horseshoe Station is located in Harrah, Oklahoma.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed peaking gas turbines at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on May 12, 1987.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-6769;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 586-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m. except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use natural gas or oil as a primary energy source in its Horseshoe facility's simple-cycle combustion turbine installations.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on January 6, 1987, (51 FR 455), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of the OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed February 20, 1987. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed units will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed units, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order: Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E permanent

exemptions for the peakload powerplants to be installed at its facility in Harrah, Oklahoma, permitting the use of natural gas or oil as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on March 4, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-5404 Filed 3-12-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-87-11; OFP Case No. 52164-6095-24, 25, 26, 27, 28-22]

Order Granting Oklahoma Gas and Electric Company Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration.

ACTION: Order granting exemption.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Sooner Station, operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permament peakload exemption under 10 CFR 503.41 for five simple-cycle combustion turbine generators with a maximum capacity of 82.8 MW each. Sooner Station is located in North Central Oklahoma.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed peaking gas turbines at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on May 12, 1987.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, Telephone (202) 586-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m, except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use natural gas or oil as a primary energy source in its Sooner facility's simple-cycle combustion turbine installations.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on January 6, 1987, (51 FR 456), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of the OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed February 20, 1987. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed units will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed units, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order: Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E permanent exemptions for the peakload powerplants to be installed at its facility in North Central Oklahoma, permitting the use of natural gas or oil as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC on March 4, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-5405 Filed 3-12-87; 8:45 am]

BILLING CODE 6450-01-M

Docket No. ERA-C&E-87-12; OFP Case No. 52164-2952-25, 26, 27, 28, 29-22]

Order Granting Oklahoma Gas and Electric Co. Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration.

ACTION: Order granting exemption.

SUMMARY: On December 9, 1986, Oklahoma Gas and Electric Company (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Muskogee Station, operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR 503.41 for five simple-cycle combustion turbine generators with a maximum capacity of 82.8 MW each. Muskogee Station is located in Muskogee, Oklahoma.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed peaking gas turbines at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on May 12, 1987.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–6769

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A–113, Washington, DC 20585, Telephone (202) 586–6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m, except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use natural gas or oil as a primary energy source in its Muskogee facility's simple-cycle combustion turbine installations.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on January 6, 1987, (51 FR 457), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of the Act, ERA provided a copy of the OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed February 20, 1987. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed units will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed units, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standards is, or would be, exceeded.

Decision and Order: Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E permanent exemptions for the peakload powerplants to be installed at its facility in Muskogee, Oklahoma, permitting the use of natural gas or oil as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on March 4, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–5406 Filed 3–12–87; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Remedial Order to Southwestern Refining Company, Inc. and the Crude Company and Notice of Opportunity for Objection

AGENCY: Economic Regulatory Administration, U.S. Department of Energy.

ACTION: Notice of issuance of proposed remedial order to Southwestern Refining Company, Inc. and the Crude Company and notice of opportunity for objection.

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Southwestern Refining Company, Inc. (SRCI), LaBarge, Wyoming 83123 and The Crude Company (TCC), 701 West Antler, Casper, Wyoming 82601. This Proposed Remedial Order (PRO) charges SRCI with filing erroneous Refiners Monthly Reports (Form P–102–M–1) for the months of January through May 1977. ERA determined that small refiner bias (SRB) entitlements valued at $1,202,143 for crude oil refined by Champlin Petroleum Company during January through May 1977 were improperly issued to SRCI since SRCI did not own the crude oil or retain title to the refined products produced therefrom. TCC and SRCI entered into three agreements in which, *inter alia*, SRCI appointed TCC its exclusive "agent" to acquire the crude oil to be refined, make delivery thereof, arrange processing, sell entitlements, and purchase the products refined therefrom. ERA finds that these agreements along with the crude oil and refined product purchase and sale transactions pursuant thereto, were a joint venture entered into between TCC and SRCI to engage

in practices which resulted in the circumvention and contravention of the Entitlements Program. SRCI's misreporting and TCC's and SRCI's circumvention caused losses to the Entitlements Program totalling $1,202,143, before interest. The impact was spread nationwide among all refiner participants in the Entitlements Program.

A copy of the PRO, with confidential information deleted, may be obtained from the DOE Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585.

Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the proposed order. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC on the 19th day of February, 1987.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 87–5279 Filed 3–12–87; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Final Action; Withdrawal of Pre-1989 Firm Power Offer, Salt Lake City Area

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Final action—withdrawal of Pre-1989 firm power offer.

Background: This notice contains the Western Area Power Administration's (Western) final action relating to its "Proposed Pre-1989 Salt Lake City Area (SLCA) Integrated Firm Power Offer (Proposed Pre-1989 Offer)," published March 7, 1985, in the **Federal Register** (50 FR 9321). The final action reflects consideration of written comments received subsequent to the Proposed Pre-1989 Offer, the comment period for which ended on April 17, 1985.

Western's Proposed Pre-1989 Offer would have marketed firm capacity and energy not contemplated by previous marketing criteria during the period October 1, 1986, through September 30, 1989. The additional resources available for this offer were the result of a number of factors, including: (1) The proposed integration of the Colorado River Storage Project (CRSP), Collbran Project, and Rio Grande Project to form the SLCA Integrated Projects; (2) the projected Glen Canyon Powerplant generator uprates; (3) the selection of a new hydrological basis for determination of marketable resources; and (4) lower reserve levels. Estimates indicated that, as the uprated generators entered into service, between 80 and 110 MW of additional hydroelectric capacity would be available during each of six seasons in the proposed marketing period. In addition, it was anticipated that energy would be available at seasonal load factors ranging from 18 to 63 percent.

Western proposed to supplement these resources with thermal purchases sufficient to provide a seasonal firm capacity rate of 85 MW at a 50 percent load seasonal load factor.

Summary of Action

On the basis of significant changes in circumstances since March 1985, Western has determined that persuasive reasons exist for not proceeding with the Proposed Pre-1989 Offer. These reasons include substantial reductions in the time period available for a pre-1989 offer, comments received on the Proposed Pre-1989 Offer, the inability of many participating customers to accept pre-1989 resources, and reductions in the estimated resources available for a pre-1989 offer. Instead, resources estimated to be available for the Proposed Pre-1989 Offer in excess of existing commitments will be marketed on a seasonal or other short-term basis in accordance with existing marketing criteria.

FOR FURTHER INFORMATION CONTACT: For further information on this action, contact Mr. Lloyd Greiner, Area Manager, or Ms. Marlene Moody, Deputy Area Manager, at: Salt Lake City Area Office, Western Area Power Administration, 438 East Second South, P.O. Box 11606, Salt Lake City, Utah 84147, Telephone: (801) 524–5493.

Issued at Golden, Colorado, February 26, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87–5459 Filed 3–12–87; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3168–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 23, 1987 through February 27, 1987 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act (CAA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D–SFW–D64013–00, Rating LO, Great Dismal Swamp National Wildlife Refuge Master Plan, VA and NC. Summary: EPA generally found no objections to implementation of this project overall but did provide recommendations on the issues of experimental prescribed burining, air quality impacts, refuge boundary inpacts and game management.

ERP No. DS–USN–D84005–VA, Rating EC2, Empress II Operation, Electromagnetic Pulise Radiation Environmental Simulator for Ships, Chesapeake Bay and Atlantic Ocean, VA. Summary: Although EPA noted that the EIS included a new, less environmentally sensitive area for testing the impacts of electromagnetic pulse, concern was expressed regarding references to a number of studies which EPA believes have inconclusive results regarding long-term impacts to organisms in the Chesapeake Bay. Consequently, EPA suggests that additional studies may be needed to address these long-term questions.

ERP No. D–FHW–E40701–KY, Rating EC2, Russellville Bypass/US 68 Improvement, US 68 West to US 68 East, KY. Summary: EPA expressed concern regarding the potential contamination of Russellville's primary raw drinking water supply and the need for additional noise, air and hydrogeologic documentation. The analysis fo specific noise abatement measures was also requested. Avoidance of water supply drainage area was recommended.

ERP No. DS–COE–F32033–MI, Rating EC2, Clinton River Federal Navigation Channel, Confined Disposal Facility Construction for Maintenance Dredging,

MI. Summary: EPA's review resulted in concerns related to groundwater contamination. Recommendations were made for improvement of the facility's clay liner. EPA encouraged increased coordination with related environmental actions in the project area.

ERP No. DD-IBR-J61127-ND, Rating EU2, Garrison Diversion (GD) Unit, Pick-Sloan Missouri Basin Program, Multipurpose Water Project, C/O, GD Reformation Act of 1986—Plan Modifications, James River, ND. Summary: EPA has rated this EIS as environmentally unsatisfactory with additional information required, based on the following: (1) For the full project size, salinity standards of 1000 ppm are predicted to be exceeded in the James River of South Dakota. EPA suggests that additional studies, completion of the Best Management Practices Manual, and a possible smaller scale project are needed to avoid salinity standard violations. (2) Additional information is needed in the final EIS including an analysis of potential biota transfer from the Sykeston Canal in the Sheyenne River Valley, the implications for the Lonetree Wildlife Management Area, and impacts upon the National Wildlife Refuge System. (3) EPA believes the proposed wetlands mitigation plan fails to meet requirements for mitigation under the Garrison Diversion Unit Reformation Act of 1986 and Section 404 of the Clean Air Act. EPA plans to continue to work towards a satisfactory procedure for the 404 permit process which will commence in 1990 or later.

ERP No. D-AFS-J65146-WY, Rating EO2, Bridger-Teton National Forest Land and Resource Management Plan, WY. Summary: EPA has concerns regarding management of water quality standards, municipal watersheds, vegetation, minerals, riparian and wetland areas, and aquatic life. EPA has requested several corrective actions and that the agency provide better consistency with water quality standards; assure adequate coverage of municipal watershed management; provide better documentation of oil and gas requirements/impacts; expand and/or define in more detail riparian/wetland management requirements expand and/or revise monitoring plans for water quality standards and aquatic life/habitat; and address State and EPA antidegradation requirements for water quality.

ERP No. D-IBR-L31001-ID, Rating EC2, Minidoka Project, North Side Pumping Division Extension, Agricultural Irrigation and Wildlife Habitat Improvements, ID. Summary: EPA expressed primary concern that irrigation wastewater, ponded to create wetlands, will exceed the EPA criteria for cadium, copper, lead, mercury, and zinc. The wildlife populations attracted to the wetland habitat could be adversely affected by exposure to the metal concentrations found in these created wetlands.

Final EISs

ERP No. F-AFS-B65003-00, Green Mountain/Finger Lakes National Forest Land and Resource Management Plan, NY and VT. Summary: EPA fully supports the plan and looks forward to working with the agency during its implementation.

ERP No. F-USN-E11018-00, Gulf Coast Strategic Homeporting, Dredging, C/O/M, FL, LA, AL, MS, and TX. Summary: EPA has determined the project impacts to be within acceptable environmental limits. EPA will work with the Navy and others to insure mitigation of environmental losses.

Dated: March 10, 1987.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87-5497 Filed 3-12-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3168-2]

Environmental Impact Statements; Notice of Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed March 2, 1987 Through March 6, 1987. Pursuant to 40 CFR 1506.9.

EIS No. 870078, Draft, SCS, WY, Big Sandy River Unit, Irrigation Improvements, Colorado River Salinity Control Program Sublette and Sweetwater Cos., Due: April 27, 1987, Contact: Frank Dickson (302) 261-5201

EIS No. 870079, Final Supplement, SCS, LA, Bell City Watershed Protection and Flood Control, Additional Channel Work, Cameron, Calcasieu and Jefferson Davis Cos., Due: April 13, 1987, Contact: Horace Austin (318) 473-7751

EIS No. 870080, Draft, FHW, TN, Nonconnah Parkway Construction, I-240 to TN-57, Shelby County, Due: April 27, 1986, Contact: Thomas Ptak (615) 736-5394

EIS No. 870081, Draft, COE, NJ, Port Jersey Channel Navigation Improvement, Bayonne and Jersey City, Due: April 27, 1987, Contact: Peter Doukas (212) 264-1275

EIS No. 870082, Draft, COE, TX, Applewhite Dam and Reservoir and Leon Creek Division Dam and Lake, Water Supply Project, Permit, Bexar County, Due: April 27, 1987, Contact: Timothy Tandy (817) 334-2095

EIS No. 870083, Draft, ICC, MD, DC, Georgetown Subdivision, Rail Line Abandonment, Mileposts 0.23 to 10.98, License, Due: April 27, 1987, Contact: Carl Bausch (202) 275-0800

EIS No. 870084, Final, FHW, ADOPTION, Stevens Gulch Road Extension and Hubbard, Duke and Elk Creeks Timber Sales, Grand Mesa, Uncompahgre and Gunnison NFs, Due: April 13, 1987, Contact: Robert Arensdorf (303) 236-3468

EIS No. 870085, Draft, BLM/AFS, MT, ID, Centennial Mountains Wilderness Study, Recommendations, Targhee and Beaverhead National Forests, Due: June 12, 1987, Contact: Phil Gezon (406) 494-5059

EIS No. 870086, Draft, MMS, AK, 1988 Chukchi Sea OCS Oil and Gas Sale No. 109, Leasing, Due: May 5, 1987, Contact: Ray Emerson (907) 261-4080.

Amended notice:

EIS No. 870008, Draft, AFS, Eldorado National Forest, Highway 88 Future Recreation Use Determination, Due: September 9, 1987, Published FR 1-30-87—Review period extended.

Dated: March 7, 1987.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 87-5498 Filed 3-12-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36138; FRL-3168-4]

Pesticide Assessment Guidelines; Availability of Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Subdivision U (Applicator Exposure Monitoring) of the Pesticide Assessment Guidelines is available to the public and can be purchased through the National Technical Information Service (NTIS). NTIS ordering information is provided.

ADDRESS: Address orders to: National Technical Information Service, Attn: Order Desk, 5285 Port Royal Rd., Springfield, VA 22161, (703-487-4650).

Subdivision U has been assigned the accession number PB87-133286 (EPA Report No. 540/9-87-127). Use this information when ordering. Orders may be placed by telephone to the NTIS order desk and charged against a deposit account of American Express, VISA, MasterCard, or sent by mail with check, money order, or account number.

The price is $18.95 for hard copy and $6.50 for microfiche.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Reinert, Hazard Evaluation Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 700D Crystal Mail #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–5734).

SUPPLEMENTARY INFORMATION: This guideline provides guidance for conducting acceptable exposure monitoring studies, reporting of data, and required quality assurance. It also provides detailed guidance on when studies are needed.

Dated: March 6, 1987.

Anne Barton,

Director, Hazard Evaluation Division, Office of Pesticide Programs.

[FR Doc. 87–5443 Filed 3–12–87; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee

Summary: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Monday, March 30, 1987 from 9:30 a.m. to 12 noon. The meeting will be held in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Eximbank's Financial Report, Program Changes, Report on OECD Negotiations, Report on Congressional Hearings, Competitiveness Report Responsibilities, and discussion of Policy Issues—Foreign Content Result and 1987 Topics.

Public Participation: The meeting will be open to public participation; and the last 20 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8871, not later than March 27, 1987. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact prior to March 23, 1987 the Office of the Secretary, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566–8871 or TDD: (202) 535–3913.

Further Information: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8871.

Hart Fessenden,

General Counsel.

[FR Doc. 87–5455 Filed 3–12–87; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL HOME LOAN BANK BOARD

South Bay Savings and Loan Association; Gardena, CA; Acceptance of Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1) (1982), and as directed by the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation of March 6, 1987, accepted the tender of the Savings and Loan Commissioner for the State of California, pursuant to § 8253 of the California Financial Code, of the appointment as receiver for South Bay Savings and Loan Association, Gardena, California, for the purpose of liquidation.

Dated: March 9, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–5416 Filed 3–12–87; 8:45 am]

BILLING CODE 6720–01–M

South Bay Savings and Loan Association; Gardena, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for South Bay Savings and Loan Association, Gardena, California, on March 6, 1987.

Dated: March 9, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–5417 Filed 3–12–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

Banc One Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio; to acquire Worthington Leasing Corporation, Columbus, Ohio, and thereby engage in leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the following states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana,

Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.

Board of Governors of the Federal Reserve System, March 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5395 Filed 3-12-87; 8:45 am]

BILLING CODE 6210-01-M

Golden Summit Corp., et al.; Applications To Engage De Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Golden Summit Corporation*, Milton, Florida; to engage *de novo* in serving as agent for the sale of life, accident and health insurance directly related to extensions of credit made by its subsidiaries pursuant to § 225.25(b)(8)(i)(A) of the Board's Regulation Y. Comments on this application must be received by March 31, 1987.

2. *Independent Bancshares, Inc.*, Red Bay, Alabama; to engage *de novo* through it subsidiary, Bay Independent Insurance Agency, Inc., Red Bay, Alabama, in the marketing of Vendors Single Interest Insurance coverage, term life insurance coverage, underwriting of the Financial Institution Bond, including Directors and Officers insurance coverages pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted within approximately a 25 mile radius of Red Bay, Alabama, which covers portions of Tishomingo and Itawamba Counties, Mississippi, as well as Franklin, Colbert, and Marion Counties, Alabama.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bancorporation-Illinois, Inc.*, Kalamazoo, Michigan, and First of America Bank Corporation, Kalamazoo, Michigan; to engage *de novo* through their subsidiary, First of America Trust Company, Bannockburn, Illinois, in offering to the general public a range of personal and institutional trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Fidelity Bancorp*, Scottsdale, Arizona; to engage *de novo* in direct mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5396 Filed 3-12-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 27, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Brian Giller*, Miami Beach, Florida; Sam Phillips, Miami, Florida; Gilles Courchene, Delray Beach, Florida; and Michael Celello, Valatie, New York; to acquire 58.69 percent of the voting shares of The Orange State Bank, Miami, Florida.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lena Mae McNaughton*, Fremont, Indiana; to acquire 55 percent of the voting shares of San Jose Banco, Inc., Fremont, Indiana.

Board of Governors of the Federal Reserve System, March 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5397 Filed 3-12-87; 8:45 am]

BILLING CODE 6210-01-M

Republic Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 2, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Republic Bancorp, Inc.*, Flint, Michigan; to acquire 100 percent of the voting shares of Republic Bank of Ann Arbor, Ann Arbor, Michigan, a *de novo* bank.

Board of Governors of the Federal Reserve System, March 9, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-5398 Filed 3-12-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 6, 1987.

Public Health Service (PHS)

(Call Reports Clearance Officer on 202-245-2100 for copies of Package).

Food and Drug Administration

Subject: Anthelmintic Drug Products for OTC Human Use—Extension—(0910-0232)
Respondents: Businesses or other for-profit

Assistant Secretary for Health

Subject: Grant Applications for Minority Community Health Coalition Demonstration Projects—Reinstatement—(0937-0167)
Respondents: Non-profit institutions
OMB Desk Officer: Shannah Koss

Health Care Financing Administration (HCFA)

(Call Reports Clearance Officer on 301-594-8650 for copies of package).

Subject: Statistical Report on Medical Care: Eligibles, Recipients, Payments, and Services—Revision—(0938-0345)—HCFA-2082
Respondents: State or local governments
Subject: Information Collection Requirements in BPO-52-F, Identification of Third Party Liability Resources for Medical Assistance and State Plan Preprint—NEW—HCFA R-106 and HCFA-SP-2
Respondents: Individuals or households; State or local governments; Federal agencies or employees
Subject: Preclearance for: Evaluation of TEFRA HMO and CMP Program—NEW—HCFA-008
Respondents: Individuals or households; Businesses or other for-profit
Subject: Medicare Qualification Statement for Federal Employees—NEW—HCFA-565
Respondents: Individuals or households
Subject: Request for Enrollment in Supplementary Medical Insurance—Extension—(0938-0245) HCFA-4040
Respondents: Individuals or households
Subject: Revision to State Plan for Medicaid—State Plan revision for Qualifying Trust Funds and Pregnant Women—Revision—(0938-0193) HCFA-179
Respondents: State or local governments
OMB Desk Officer: Allison Herron

Social Security Administration (SSA)

(Call Reports Clearance Officer on 301-594-5706 for copies of package).

Subject: Claim for Amounts Due in the Case of a Deceased Beneficiary—Extension—(0960-0101)
Respondents: Individuals or households
Subject: Student's Statement Regarding School Attendance—Extension—(0960-0105)
Respondents: Individuals or households
Subject: Marriage Certification—Extension—(0960-0009)
Respondents: Individuals or households
Subject: Statement of Claimant or Other Person—Extension—(0960-0045)
Respondents: Individuals or households
Subject: Request for Withdrawal of Application—Extension—(0960-0015)
Respondents: Individuals or households
Subject: Federal Assistance—Revision—(0960-0184)
Respondents: Individuals or households; Businesses or other for-profit
Subject: Claimant's Medications—Extension—(0960-0289)
Respondents: Individuals or households
OMB Desk Officer: Judy Egan

Office of Human Development Services (OHDS)

(Call Reports Clearance Officer on 202-472-4415 for copies of package).

Subject: National Evaluation of the Impact of Guardians *AD Litem* in Child Abuse or Neglect Judicial Proceedings—NEW
Respondents: Individuals or households
OMB Desk Officer: Judy Egan

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

HCFA: 301-594-8650
PHS/FDA: 202-245-2100
SSA: 301-594-5706
OHDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: March 9, 1987.

James V. Oberthaler,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 87-5273 Filed 3-2-87; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Interagency Committee on Smoking and Health; Meeting

ACTION: Notice of meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), the Centers for Disease Control announces the following Committee meeting.

Name: Interagency Committee on Smoking and Health.

Time and Date: 9 a.m.-4 p.m., March 31, 1987.

Place: Room 503-A, Hubert W. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health on: (a) Coordination of all research and education programs and other activities within the Department and with other Federal, State, local, and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, Federal agencies, and State and local public health

agencies with respect to smoking and health activities.

Agenda: The entire meeting will be open to the pulbic. It will include discussion of the smoking issue and its impact on minority populations. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from: John Bagrosky, Executive Secretary, Interagency Committee on Smoking and Health Park Building, Room 1–10, 5600 Fishers Lane, Rockville, Maryland 20857, Telephones: FTS: 443–1575, Commercial: 301/443–1575.

Dated: March 9, 1987.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–5394 Filed 3–12–87; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

De Kalb Feeds, Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's) held by De Kalb Feeds, Inc. One NADA provides for use of a Type A article containing 0.8 grams per pound tylosin for making Type C swine feeds and the other for a 10-gram-per-pound Type A article to make Type C swine, beef cattle, and chicken feeds. The firm requested the withdrawal of approvals.

EFFECTIVE DATE: March 23, 1987.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–214), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3184.

SUPPLEMENTARY INFORMATION: De Kalb Feeds, Inc., P.O. Box 111, Rock Falls, IL 61071, is the sponsor of NADA 133–382 which provides for use of a 10-gram-per-pound tylosin Type A article to make Type C swine, beef cattle, and chicken feeds, and NADA 133–383 which provides for use of a 0.8-gram-per-pound tylosin Type A article to make Type C swine feeds. The NADA's were originally approved April 26, 1983 (48 FR 18801).

In a letter dated November 19, 1986, the sponsor requested the withdrawal of approvals because the products were not being manufactured.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of both NADA 133–382 and 133–383 and all supplements thereto is hereby withdrawn, effective March 23, 1987.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing those portions of the regulations that reflect these approvals and is removing the firm from the list of sponsors of approved NADA's.

Dated: March 9, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87–5448 Filed 3–12–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87C–0023]

Cosmetic, Toiletry and Fragrance Association, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Cosmetic, Toiletry and Fragrance Association, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of carbon black for coloring cosmetics generally, including those for use in the area of the eye.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402–403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 7C0208) has been filed by the Cosmetic, Toiletry and Fragrance Association, Inc., 1110 Vermont Ave. NW., Washington, DC 20005, proposing that 21 CFR Part 74 of the color additive regulations be amended to provide for the safe use of carbon black as a color additive for coloring cosmetics generally, including cosmetics for use in the area of the eye.

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: March 6, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–5384 Filed 3–12–87; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting

The following advisory committee meeting is announced:

Board of Tea Experts

Date, time, and place. March 30 and 31, 10 a.m., Rm. 700, 850 Third Ave., Brooklyn, NY.

Type of meeting and contact person. Open public hearing, March 30, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 4:30 p.m.; open committee discussion, March 31, 10 a.m. to 4:30 p.m., Robert H. Dick, New York Regional Laboratory, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 212–965–5739.

General function of the committee. The committee advises on establishment of uniform standards of purity, quality, and fitness for consumption of all teas imported into the United States under 21 U.S.C. 42.

Agenda—Open Public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss and select tea standards.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee

meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)) and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: March 6, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–5385 Filed 3–12–87; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

National Cancer Institute; Notice of Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86, Stat. 770–776), and the Health Research Extension Act of 1985 (Pub. L. 99–158), the National Institutes of Health, announces the establishment by the Director, National Cancer Institute of the Acrylonitrile Study Advisory Panel and the Methylene Chloride Study Panel.

The Acrylonitrile Study Advisory Panel and the Methylene Chloride Study Advisory Panel shall advise the Director of the National Cancer Institute, Associate Director, Epidemiology and Biostatistics Program, and Director, Division of Cancer Etiology, NCI on various aspects of the epidemiology on the acrylonitrile and methylene chloride studies.

Authority for these Committees shall terminate on February 15, 1989, unless renewed by appropriate action as authorized by law.

Dated: March 9, 1987.

James B. Wyngaarden, M.D.,

Director, NIH.

[FR Doc. 87–5368 Filed 3–12–87; 8:45 am]

BILLING CODE 4140–01–M

Establishment of Advisory Council on Hazardous Substances Research and Training

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), and the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499) the National Institutes of Health announces the establishment by the Secretary of Health and Human Services of the Advisory Council on Hazardous Substances Research and Training.

The Secretary of Health and Human Services is required under Section 311(a)(5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96–510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499, to establish and support a hazardous substances research and training program. The Advisory Council shall advise the Secretary; the Assistant Secretary for Health; the Director, National Institutes of Health; and the Director, National Institute of Environmental Health Sciences, on the implementation of section 311(a) of the Act, and assist in the coordination of this subsection and other programs of research, demonstration and training under section 311 which are conducted or administered by the Environmental Protection Agency. The Council shall review the plan prepared by the Director of the National Institute of Environmental Health Sciences, review the report prepared by the Environmental Protection Agency and consult with the Department of Defense.

Subject to rechartering, the Advisory Council on Hazardous Substances Research and Training shall terminate on October 17, 1992.

Dated: March 9, 1987.

James B. Wyngaarden,

Director, NIH

[FR Doc. 87–5367 Filed 3–12–87; 8:45 am]

BILLING CODE 4140–01–M

Office of the Assistant Secretary for Health

National Center for Health Services Research and Health Care Technology Assessment; Assessment of the Cardiointegram, 1987

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is seeking information in coordinating an assessment on the safety, clinical effectiveness and indications for the cardiointegram as a diagnostic and predictive cardiovascular test. Specifically this assessment seeks to determine whether or not the cardiointegram is useful as a sensitive or specific predictor of the presence or absence of coronary artery disease either when used as a screening or as a diagnostic test. Information that addresses the predictive value of the CIG as a diagnostic test is also being sought. Additionally, information is requested on whether the cardiointegram is an established and clinically accepted diagnostic modality, or is at present an investigational technique.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The

assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on these assessments, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than June 1, 1987 (or within 90 days from the date of publication of this notice).

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trails and other well-designed clinical studies, information related to the clinical acceptability and effectiveness of this technology, and a characterization of the patient population most likely to benefit from this technology in the diagnosis of cardiovascular disease. Proprietary information is not being sought.

Written material should be submitted to: Richard S. Bodaness, M.D., Ph.D., Office of Health Technology Assessment, 5600 Fishers Lane, Room 18A-27, Rockville, MD 20857, (301) 443-4990.

Dated: March 5, 1987.

Enrique D. Carter, M.D.,

Director, National Center for Health Services, Research and Health Care Technology Assessment.

[FR Doc. 87-5419 Filed 3-12-87; 8:45 am]

BILLING CODE 4160-17-M

National Center for Health Services Research and Health Care Technology Assessment; Fourth Notice of Assessment of Medical Technology, 1987

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating a reassessment of what is known of the safety, effectiveness, appropriateness and use (indication) of gating devices and surface coils in conjunction with magnetic resonance imaging (MRI) procedures. Specifically, we are interested in: (1) The areas of clinical imaging where the use of cardiac or respiratory gating has provided clinically useful information and is considered an effective diagnostic imaging technique, (2) the areas of clinical imaging where the use of surface coils has provided clinically useful information and is considered an effective diagnostic imaging technique, (3) specific indications for use of gated MRI procedures and MRI procedures that employ surface coils, (4) a comparison of gated and surface coil NMR imaging with the more conventional diagnostic procedures, and (5) whether these techniques assist with diagnosis or have an effect on the treatment of the patient.

The PHS, through the OHTA, has previously announced that it was conducting an assessment of what is known of the safety, clinical effectiveness, and indications for the use of MRI. (**Federal Register** 49(85):18624, 1984. **Federal Register** (49 (215):44244, 1984. **Federal Register** 49(246):49515, 1984).

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than June 1, 1987, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this technology is also being sought.

Written material should be submitted to: Office of Health Technology Assessment, Room 18A-27, 5600 Fishers Lane, Rockville, MD 20857.

Dated: March 5, 1987.

Enrique D. Carter,

Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87-5420 Filed 3-12-87; 8:45 am]

BILLING CODE 4160-17-M

Public Health Service

National Toxicology Program; Scientific Counselors Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on March 30 and 31, 1987.

The meeting will be open to the public from 9:00 a.m. until adjournment on March 30. The preliminary agenda with *approximate* times are as follows:

9:00 a.m.-9:30 a.m.—Report of the Director, NTP

9:30 a.m.-10:00 a.m.—Overview of the NIEHS Biometry and Risk Assessment Program

10:15 a.m.-11:30 a.m.—Review of Chemicals Nominated for NTP Studies. (Six chemicals will be reviewed. The chemicals were evaluated by the NTP Chemical Evaluation Committee on January 13, 1987, and are: (1) Black Pepper (*Piper Nigrum Linn*); (2) Cholestyramine; (3) 1,3,-Diphenyl-guanidine; (4) Divinylbenzene; (5) Sodium Nitrite; and (6) 1,3,5-Trichloro-1,3,5-triazine-2,4,6-(1H, 3H, 5H)-trione.

12:15 p.m.-4:00 p.m.—Description of the NTP toxicology and carcinogenesis studies process.

4:00 p.m.-5:00 p.m.—Description of the NTP quality assurance program. The meeting on March 31 will be open to the public from 8:30 a.m. to 12:30 p.m. The preliminary agenda with *approximate* time is as follows:

8:30 a.m.-1230 p.m.—Review of research in the Carcinogenesis and Toxicology Evaluation Branch, Toxicology Research and Testing Program, NIEHS.

In accordance with the provisions set forth in section 552b (c)(6) Title 5 U.S. Code and section 10 (d) of Pub. L. 92-463, the meeting will be closed to the public on March 30 from 8:30 a.m. to 9:00 a.m. and on March 31 from 1:30 p.m. to 3:00 p.m. for further evaluation of research activities in the Carcinogenesis and Toxicology Evaluation Branch, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would consitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541-3971, FTS 629-3971, will have available a roster of Board members and expert consultants and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: February 25, 1987.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 87-5369 Filed 3-12-87; 8:45 am]

BILLING CODE 4140-01-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Xylenes

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of xylenes (mixed) (60% m-xylene, 14% p-xylene, 9% o-xylene, and 17% ethylbenzene). Xylene is a clear, colorless, aromatic liquid. Xylenes are used as a solvent in the paint, printing, rubber and leather industries and in the manufacture of mirrors. The mixture is also used as a cleaning agent, as a degreaser, and as a constituent of aviation and automobile fuels. It is also used in the production of benzoic acid, phthalic anhydride, and isophthalic and terephthalic acids as well as their dimethyl esters.

Toxicology and carcinogenesis studies were conducted by administering 0, 250, or 500 mg/kg xylenes in corn oil by gavage to groups of 50 F344/N rats of each sex, 5 days per week for 103 weeks. Groups of 50 $B6C3F_1$ mice of each sex were administered 0, 500, or 1,000 mg/kg xylenes on the same schedule.

Under the conditions of these 2-year gavage studies, there was no evidence of carcinogenicity [1] of xylenes (mixed) for male or female F344/N rats given 250 or 500 mg/kg or for male or female $B6C3F_1$ mice given 500 or 1,000 mg/kg.

Copies of *Toxicology and Carcinogenesis Studies of Xylenes (Mixed) (60% m-xylene, 14% p-xylene, 9% o-xylene, and 17% ethylbenzene) in F344/N Rats and $B6C3F_1$ Mice (Gavage Studies)* (TR 327) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone: (919) 541-3991. FTS: 629-3991.

[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: March 9, 1987.

David P. Rall,

Director, NTP.

[FR Doc. 87-5370 Filed 3-12-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-87-1684; FR-2331]

Application Submission Dates for HUD-Administered Small Cities Program

AGENCY: Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice advises prospective applicants of the dates for submission of applications to the HUD office for the HUD-administered Small Cities Program in New York under the Community Development Block Grant Program for Fiscal Year 1987.

FOR FURTHER INFORMATION CONTACT: Patricia G. Myers, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC. 20410. Telephone (202) 755-6322. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR 570.420(h)(3), the Department of Housing and Urban Development (HUD) has established dates for submission of applications for Small Cities grants in the State of New York for Fiscal Year 1987. Applications for funding under the Single Purpose and Comprehensive Grant provisions of the HUD-administered Small Cities Program will be accepted only during the designated time period. Applications received in the HUD Office after the deadline must be postmarked no later than the March 30, 1987 submission deadline. Applications postmarked after that date are unacceptable and will be returned.

Applications for Single Purpose grants under 24 CFR 570.430, or applications for Comprehensive Grants under 24 CFR 570.426 for the State of New York are required to be submitted no earlier than March 16, 1987 and no later than March 30, 1987. Applicants in New York in the Counties of Sullivan, Ulster and Putnam and nonparticipating jurisdictions in the Urban Counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Regional Office. All other nonentitled communities in the State of New York should submit their applications to the Buffalo Field Office.

The Application requirements related to this program have been approved by the Office of Management and Budget (OMB) and assigned approval number 2506-0060.

This action is exempt from the provisions of the National Environmental Policy Act under 24 CFR 50.20(k).

Dated: March 9, 1987.

Jack R. Stokvis,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 87-5375 Filed 3-12-87; 8:45 am]

BILLING CODE 4210-29-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1676; FR-2326]

Section 202 Loans for Housing for the Elderly or Handicapped; Announcement of Fund Availability, Fiscal Year 1987

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Fund Availability.

SUMMARY: HUD is announcing the availability of Fiscal Year 1987 loan authority under the section 202 Housing for the Elderly or Handicapped Direct Loan Program. The loan authority will be used to provide direct Federal loans for a maximum term of 40 years under section 202 of the Housing Act of 1959 to assist private, nonprofit corporations and nonprofit consumer cooperatives in the development of housing and related facilities to serve the elderly or handicapped.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION: Notice is hereby given under Title 24 Code of Federal Regulations Part 885, that the Department of Housing and Urban Development will be accepting Applications for Fund Reservations from eligible Borrowers (see 24 CFR 885.5 for the definition of "Borrower" and other terms) for direct loans for the construction or substantial rehabilitation of housing and related facilities for dwelling use by elderly or handicapped families under the provisions of section 202 of the Housing

Act of 1959. Applications will also be accepted for loans for acquisition, with or without moderate rehabilitation, of housing and related facilities for use as group homes for the nonelderly handicapped.

The Assistant Secretary for Housing is assigning Fiscal Year 1987 section 202 loan fund authority to the HUD Field Offices identified below in conformance with the provisions of section 213(d) of the Housing and Community Development Act of 1974. While the precise number of units to be funded depends upon the number of approvable applications received, the following distribution plan shows the estimated numbers of units and Fiscal Year 1987 loan authority under which applications may be funded in each Field Office jurisdiction identified below.

FISCAL YEAR 1987, SECTION 202, DISTRIBUTION PLAN BY HUD FIELD OFFICE JURISDICTION

	Estimated No. of units	Estimated loan authority
Boston Regional Office:		
Boston	347	$19,293,000
Hartford	137	7,398,000
Manchester (Maine, New Hampshire, Vermont)	154	6,976,000
Providence	57	2,644,000
Total	695	36,311,000
New York Regional Office:		
Buffalo	265	10,971,000
Caribbean	141	5,666,000
Newark	355	19,915,000
New York	754	45,843,000
Total	1,515	82,397,000
Philadelphia Regional Office:		
Baltimore	121	5,977,000
Charleston	90	4,176,000
Philadelphia (Delaware)	326	17,278,000
Pittsburgh	189	9,450,000
Richmond	167	6,964,000
Washington, DC (portion of Maryland and Virginia)	103	5,407,000
Total	996	49,252,000
Atlanta Regional Office:		
Atlanta	253	10,803,000
Birmingham	197	7,447,000
Columbia	186	6,324,000
Greensboro	300	11,430,000
Jackson	181	6,244,000
Jacksonville	481	21,789,000
Louisville	182	8,062,000
Knoxville	95	3,078,000
Nashville	145	4,930,000
Total	2,020	80,107,000
Chicago Regional Office:		
Chicago	480	25,968,000
Cincinnati	89	3,800,000
Cleveland	208	9,069,000
Columbus	113	4,305,000
Detroit	179	8,413,000
Grand Rapids	111	4,007,000
Indianapolis	216	7,797,000
Milwaukee	226	8,203,000
Minneapolis/St. Paul	174	6,543,000
Total	1,796	78,105,000
Fort Worth Regional Office:		
Fort Worth (New Mexico)	262	10,794,000
Houston	133	4,948,000
Little Rock	205	6,027,000
New Orleans	149	6,064,000
Oklahoma City	150	4,664,000
San Antonio	125	4,638,000

FISCAL YEAR 1987, SECTION 202, DISTRIBUTION PLAN BY HUD FIELD OFFICE JURISDICTION—Continued

	Estimated No. of units	Estimated loan authority
Total	1,024	37,135,000
Kansas City Regional Office:		
Des Moines	150	5,250,000
Kansas City (portion of Missouri)	209	6,772,000
Omaha	77	2,618,000
St. Louis	146	6,117,000
Total	582	20,757,000
Denver Regional Office:		
Denver (Montana, North Dakota, South Dakota, Utah and Wyoming)	222	9,768,000
Total	222	9,768,000
San Francisco Regional Office:		
Honolulu (Guam)	49	2,450,000
Los Angeles	608	35,082,000
Phoenix	126	4,763,000
Sacramento	89	3,899,000
San Francisco (Nevada)	331	17,179,000
Total	1,203	63,373,000
Seattle Regional Office:		
Portland (Idaho)	140	4,829,000
Seattle	137	5,966,000
Total	277	10,795,000
National Total	10,330	468,000,000

The foregoing distribution plan is a guide for prospective Borrowers. It estimates the loan authority that is expected to be available in each HUD Field Office jurisdiction. However, these unit and loan estimates are subject to change by Regional or Field Offices. Changes may be necessary to assure that there is enough loan authority in each Field Office to support housing projects of feasible size. Each HUD Field Office receiving Fiscal Year 1987 loan authority will publish one Invitation for Applications for section 202 Fund Reservation (Invitation) for its jurisdiction indicating the amount of loan authority and the maximum number of units this amount is expected to assist, as well as the total number of units available for metropolitan and nonmetropolitan areas. Whether an area is "metropolitan" or "nonmetropolitan" will be determined in accordance with the redefinitions of metropolitan statistical areas announced by the Office of Management and Budget, effective June 30, 1983 (See OMB Public Affairs Issuance 83–20, June 27, 1983, and subsequent changes made June 27, 1984, June 27, 1985 and October 18, 1986.)

To provide equitable geographic distribution of the limited number of Section 202 units, a Field Office may establish a maximum number of units that may be requested under any one application. This unit limitation will vary by Field Office, depending on the number of units available for either the metropolitan or nonmetropolitan category of funds. However, the size limits for projects for the chronically mentally ill and nonelderly handicapped set forth in Paragraphs (9) and (10) below, or for projects for the elderly set forth in Paragraph (13), will apply.

The Fiscal Year 1988 Federal Budget proposes to reduce the Fiscal Year 1987 loan limitation by $90.8 million in order to reduce the number of units funded in FY 1987 from 12,000 to about 10,000. The Fiscal Year 1988 Budget also proposes a Fiscal Year 1988 Section 202 loan limitation which will support 2,000 units, plus necessary amendments to provide loan increases for previously approved projects. Appropriation language also is proposed which would authorize the carryover of enough Fiscal Year 1987 Section 8 budget authority to support the 2,000 Section 202 units requested for Fiscal Year 1988.

To be implemented, these budget proposals require approval by Congress. If Congress fails to take action, or has not completed action by the time applications must be selected, *all available authorities will be fully obligated this Fiscal Year.* Because positive Congressional action on these proposals is uncertain, full funding is being advertised and will be entirely obligated unless Congress intervenes. Therefore, HUD will not defer or otherwise restrict either the section 202 loan limitation or the section 8 budget authority involved *unless* Congress enacts the proposals. If that occurs, appropriate actions will be taken to implement the law.

Priority Categories for Selection

The purpose of the priority system for the Section 202 program is to assure that applications from localities that have been relatively underfunded over the years receive priority consideration and are treated in an equitable manner. In view of the limited funds for projects in Fiscal Year 1987, and in order to assure open competition, Field Offices will not suballocate funds within their jurisdiction. However, 20–25 percent of available funds will be allocated to nonmetropolitan areas to meet rural housing needs. Field Office Invitations will identify the total number of units available for metropolitan and for nonmetropolitan areas of the jurisdiction. Applications received for projects in metropolitan areas will compete against each other; applications received for projects in nonmetropolitan areas will similarly compete against each other. At the time of end-of-year selection determinations, the Department may transfer unused authority from Field Offices that are

without sufficient approvable applications to other Field Offices within the same State where there is not sufficient authority for all approvable applications. Where a Field Office jurisdiction covers more than one State, separate metropolitan or nonmetropolitan allocation areas may be established, to the extent practicable, for each State's part of the jurisdiction. Any amounts allocated to a State or to areas or communities within a State that are not likely to be used within a fiscal year will not be reallocated for use in another State unless the Department determines that other areas or communities in the same State cannot use the amounts within that same fiscal year.

In order to assure that applications are funded in the areas of greatest need, approvable applications will be divided into two categories, each of which shall have two subcategories. The categories and subcategories are as follows:

Category A

Applications for projects which will be located in localities which have previously been underfunded relative to their needs and the funding needs of other localities.

(1) Such applications which are in localities within jurisdictions having rental vacancy rates of 5 percent or less;

(2) Such applications which are in localities within jurisdictions having rental vacancy rates in excess of 5 percent.

Category B

Applications for projects which will be located in localities which have *not* been underfunded relative to their needs and the funding needs of other localities.

(1) Such applications which are in localities within jurisdictions having rental vacancy rates of 5 percent or less;

(2) Such applications which are in localities within jurisdictions having rental vacancy rates in excess of 5 percent.

Applications shall be selected for funding first from Category A(1), second from Category A(2), third from Category B(1), and finally from Category B(2). An application in a lower subcategory which is judged clearly superior to one in the next higher subcategory, i.e., its final score is at least 10 points higher, may be selected for funding. For example, if an application in Category B(1) has a final score of 67, and an application in Category A(2) has a score of 57, the higher-scored application may be selected over the lower-scored application. The same rule would apply if the lower-scored project were in Category A(1) and the higher-scored project in Category A(2). It would not apply to projects that are more than one subcategory apart, as for example, a higher-scored project in either B(1) or B(2) could not be selected over a lower-scored project in A(1).

Schedule for Section 202 Invitations, Workshops and Application Deadline

All applications for section 202 Fund Reservations submitted by eligible Borrowers must be filed with the appropriate HUD Field Office and must contain all exhibits and additional information as required by 24 CFR 885.210.

In March 1987, HUD Field Offices will publish a one-time Invitation in newspapers of general circulation, and in any minority newspapers serving the Field Office jurisdiction. Field Offices will accept applications after publication of the Invitation. No application will be accepted after the regular closing time of the appropriate Field Office on Monday, June 1, 1987, unless that time is extended by Notice published in the **Federal Register**. Applications that are mailed may be accepted provided they bear a postmark date or receipt of mailing that is no later than the regular closing time of the appropriate Field Office on Monday, June 1, 1987.

Organizations interested in applying for a Section 202 Fund Reservation should provide the appropriate Field Office with the name, address and telephone number of the Sponsor and Borrower organizations, advise the Field Office whether they wish to attend the workshop described in the following paragraph, and secure the program handbook and Application Package. HUD encourages minority organizations to participate in this program as Sponsors and Borrowers. Field Offices will conduct workshops during April 1987 to explain the section 202 Program and the Seed Money Loan program under section 106(b) of the Housing and Urban Development Act of 1968. Under this latter program, HUD makes direct, interest-free loans to approved nonprofit section 202 eligible Borrowers to cover certain preconstruction expenses. At the workshops, Application Packages will be distributed, application procedures and requirements (including the Department's design and cost containment requirements and required exhibits) will be discussed, and concerns such as local market conditions, building codes, zoning and housing costs will be addressed. HUD strongly recommends that prospective Sponsors and Borrowers attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office Invitation. Interested disabled persons should contact the Field Office to assure that any necessary arrangements can be made for them to be able to attend and participate in the workshop.

Additional Information

(1) In evaluating applications for section 202 Fund Reservations, the Department's cost containment requirements are a significant factor in the ranking process. These requirements will be included in the section 202 Application Package available at the local HUD Field Office. The section 202 workshops will include discussions of these and other application requirements.

(2) Entities with religious purposes may serve as Sponsors of section 202 projects, but the Borrower's Articles of Incorporation and By-Laws may not include any reference to religion or religious purposes. (The mere recital in a Borrower's Articles of Incorporation that it is organized exclusively for religious, charitable, scientific, literary or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code will not by itself make a Borrower ineligible. However, the dissolution clause must provide that, upon dissolution or winding up of the corporation, its assets remaining after payment of all debts and liabilities shall be distributed to a nonprofit fund, foundation or corporation other than one created for a religious purpose, which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code.)

(3) Borrower corporations will not be permitted to engage in any other business or activity, including the operation of any other rental project, or to incur any liability or obligation not in connection with the proposed project. The intent of this requirement is to give HUD sole claim to the assets of the Borrower corporation in case of default under the Regulatory Agreement.

If a Borrower corporation had been established previously for the sole purpose of applying for a section 202 Fund Reservation and the corporation's application was not funded, a new corporation need not be established. HUD's requirement set out in paragraph (4) below, with regard to evidence of IRS tax exemption under section 501(c)(3) or (4), is not altered by this requirement.

(4) Sponsors, *including churches*, must have a current tax exemption ruling from IRS. The Borrower corporation must furnish evidence that it has either obtained a 501(c)(3) or 501(c)(4) tax-

exemption ruling or has applied for one no later than the June 1, 1987 deadline.

(5) Only eligible Borrowers may submit Applications. The Borrower must be a separate legal entity and must be an eligible private, nonprofit corporation or a nonprofit consumer cooperative as defined in 24 CFR 885.5 and must have been legally incorporated consistent with the requirement of paragraph (3), above, at the time it submits its Application to the HUD Field Office.

(6) Because of the nonprofit nature of the section 202 program, no officer or director of the Sponsor or Borrower, or trustee, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever, except that this prohibition does not apply to any management contracts (or management fees associated therewith) entered into by the Borrower with the Sponsor or its nonprofit affiliate.

(7) Where the proposed project site is being optioned or acquired from a general contractor or its affiliate, the section 202 Borrower will be prohibited from selecting that contractor to construct the project for which an Application for funding is being made. Further, the proposed contractor may not be the attorney, architect, housing consultant or management agent for the project. This prohibition extends to any firm or subsidiary having an identity of interest with the contractor.

(8) In cases involving sites to be acquired from a local public body, satisfactory evidence of site control consists of evidence that the public body (a) possesses clear title to the land and (b) has entered into a legally binding commitment to convey the property to the Borrower corporation upon its receiving section 202 funding. A mere recitation of intent to convey the land made by an official of the public body to the Borrower or preliminary actions on the part of the public body are not adequate evidence of site control.

(9) Projects designed exclusively for the chronically mentally ill are eligible under the same conditions and criteria as other projects designed solely for the nonelderly handicapped, except that (a) only group homes for up to 15 persons and independent living complexes to serve up to 20 persons may be proposed for the chronically mentally ill and (b) Borrowers proposing housing for the chronically mentally ill will be required to complete a Service Program Description, describing how their proposed projects will be linked to supportive services needed to maintain chronically mentally ill persons in the community. Since funds for such services cannot be provided from the section 8 subsidy, evidence of other funding sources must be provided, with assurances that the funds will be secured by the time the project is ready for occupancy and will continue to be available for a reasonable time thereafter. Borrowers are placed on notice that if at any time these supporting funds are not available, the project will have to be converted to occupancy by elderly or handicapped persons or families capable of living independently without the supportive services.

To assist HUD in evaluating a Borrower's capabilities with regard to supportive services for the residents of group homes or independent living complexes, HUD will invite a representative from the State Mental Health Authority (SMHA) to evaluate and make recommendations about the Service Program Description. To this end, prospective Borrowers may be required to submit a copy of the Application to the SMHA. The HUD Field Office will advise prospective Borrowers of further details in this regard. Since the review and evaluation is at the option of the State Mental Health Authority, HUD will conduct its own independent review for those States that do not wish to participate.

(10) HUD limits for housing for the nonelderly handicapped (other than the chronically mentally ill) permit group homes to serve up to 15 persons on one site, and independent living complexes to include up to 40 units on one site. Although up to 40 units are permitted, HUD limits independent living complexes comprised of three or more bedroom units to one or two parents with children. These complexes may not be developed to serve large numbers of single unrelated persons. In an independent living complex, no more than 40 households may be served on any one site. For purposes of this requirement, a household is a family or any individual. Two unrelated individuals sharing a two bedroom unit will be counted as two households in calculating the 40 household limit.

(11) Borrowers proposing group homes for the nonelderly handicapped are reminded that if a unit is to be occupied by one person, its size will be limited by the 0-bedroom square footage of up to 449 square feet, using the 0-bedroom fair market rent and unit cost limits. If the unit will be occupied by two persons, the size may be increased to the one-bedroom square footage of from 450 to 540 square feet, using the one-bedroom fair market rent and cost limits.

(12) Under 24 CFR 885.215, no single Sponsor may submit an Application or Applications in any HUD Region for more than 300 units.

(13) Reservations for projects intended primarily for the elderly will not be approved for more than 200 units, including units for the elderly already on or near the site, as well as the units being requested. This policy is intended to expand the number of areas in the community where the elderly can live in housing specifically designed to meet their needs. This limitation does not rule out housing for the elderly in submarket areas of major cities where privately or publicly financed housing-for the elderly already exists, but is designed to discourage additional housing for the elderly in proximity to existing privately or publicly financed facilities where the additional units would result in a concentration of over 200 units. However, the Field Office Manager may waive the requirement in a given area or locality, if, for example, there are no other suitable sites available for housing for the elderly.

(14) On September 25, 1985, a Final Rule (effective October 30, 1985) was published in the **Federal Register** (50 FR 38797) to allow section 202 loans for the acquisition of existing housing and related facilities, with or without moderate rehabilitation (hereinafter referred to as "acquisition") for group homes for the nonelderly handicapped. Proposals involving housing units already owned and operated by the Sponsor as group homes for the handicapped at the time Applications are submitted (often referred to as "refinancing") are not eligible for acquisition or rehabilitation under the section 202 program.

(15) To be responsive to the Invitation, Borrowers must not request more units than advertised for the respective metropolitan or nonmetropolitan areas designated in the Invitation, and the number of units applied for must not exceed any maximum number of units per Application that may be established by the local Field Office.

(16) If the Borrower elects to use a housing consultant, it should be careful to select a consultant who is knowledgeable about the section 202 housing program. Failure to meet program requirements will be a cause for rejection of the application, whether or not a housing consultant is used by the Borrower. Borrowers may wish to

contact previous groups which have used the consultant under consideration in order to make a determination as to the consultant's qualifications.

(17) Deficiency letters will be issued by the Field Offices and the Borrowers will be allowed 14 calendar days from the date of the letter to submit the identified missing information or to explain inconsistencies in the application submission. No amendments or corrections to applications will be permitted after the June 1, 1987 deadline. Further, all necessary actions (e.g., adoption of corporate resolutions) must have been taken on or before the deadline date for filing applications.

(18) HUD will make contract authority and budget authority under section 8 of the United States Housing Act of 1937 available for successful Borrowers, subject to the availability of funds.

(19) A notice of approval will be sent to the Borrowers selected in accordance with the requirements of 24 CFR 885.220 [Review of Application for Fund Reservation] and on the basis of information furnished by the Borrowers as set forth in the Field Office Application Package.

(20) To be considered for Fiscal Year 1987 funding, new applications must be submitted under this Notice of Fund Availability.

(21) 24 CFR 885.410(j) contains a minimum capital investment requirement for section 202 Borrowers. This requirement applies to all section 202 Borrowers receiving HUD Field Office approval of an Application for a section 202 Fund Reservation (under 885.400). The minimum capital investment (currently established at one-half of 1 percent (0.5%) of the total HUD-approved mortgage amount, not to exceed $10,000) will apply to all section 202 projects receiving Fund Reservations in Fiscal Year 1987. Section 106(b) Seed Money Loan Funds, under 24 CFR Part 271, may not be used to satisfy the minimum capital investment requirement.

(22) Three statutory amendments to the section 202 Program not yet reflected in HUD regulations also are of relevance to Borrowers making application under this Notice. (These amendments will be included in the final rule amending the section 202 program to reflect 1983 and 1984 amendments. See interim rule published on April 10, 1986, 51 FR 12308.) Section 223(e) of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181, approved November 30, 1983, added a provision specifying that, unless otherwise requested by the Sponsor, a maximum of 25 percent of the units in a project may be efficiency units, subject to a HUD determination that such units are appropriate for the elderly and handicapped population residing in the vicinity of the project or to be served by the project. The Department, in its annual housing notice governing each fiscal year's program, states that all projects for the elderly must include 25 percent efficiency units, unless a Borrower can demonstrate that there is an insufficient market for such units. It also allows a Borrower to choose to pay the additional cost of providing all one-bedroom units. (At its discretion, a Borrower may also elect to include more than 25 percent efficiency units.)

Section 223(e) also added a provision requiring the Secretary to take into account special design features necessary for housing for the elderly and handicapped and to adjust cost limits at least once annually to reflect changes in construction costs. The Department modifies the base cost limits published in 24 CFR 885.410 as necessary, by adjusting upward or downward the high cost percentages for each base locality. HUD annually reviews the high cost percentages to assure that adjustments are made to reflect changes in construction costs. In addition, special design features provided by section 202, such as multi-purpose space, central dining rooms, etc., are not included in the calculations for the section 202 per unit cost limits.

Finally, section 223(e) added a provision prohibiting the Secretary from denying any Sponsor the opportunity voluntarily to pay for amenities or design features not included in the loan. The annual housing notice specifies that if the Department denies a request for a waiver of the requirement for 25 percent efficiency units, a Sponsor may elect to pay the additional cost of one-bedroom units or may pay for excess amenities which would not be permitted under the Department's cost containment guidelines.

(23) To the extent that funds are available to fund new projects from the Headquarters Reserve (which Reserve shall constitute no more than 15 percent of the total section 202 Fiscal Year 1987 loan authority), applications which are otherwise approvable but not funded by the Regional Offices from the field allocation may be considered for Headquarters funding, provided they meet at least one of the conditions set forth in section 213(d)(4) of the Housing and Community Development Act of 1974, as amended:

(A) Unforseeable housing needs, especially those brought on by natural disasters or special relocation requirements;

(B) Support for the needs of the handicapped (only if exclusively for the nonelderly handicapped);

(C) Support for minority enterprise;

(D) Providing assisted housing as a result of the settlement of litigation;

(E) Small research and demonstration projects;

(F) Lower-income housing needs described in housing assistance plans; or

(G) Innovative housing programs or alternative methods for meeting lower-income housing needs approved by the Secretary.

Borrowers are invited to submit applications for section 202 Fund Reservations in accordance with this Notice and with 24 CFR Part 885.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the information collection requirements contained in these section 202 application requirements have been approved by the Office of Management and Budget and have been assigned OMB control number 2502–0267.

The Catalog of Federal Domestic Assistance Program title and number is 14.157, Housing for the Elderly or Handicapped.

(Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q), sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: March 9, 1987.

Thomas T. Demery,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 87–5376 Filed 3–12–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–07–4322–02]

Albuquerque District, NM; District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Albuquerque district grazing advisory board meeting.

SUMMARY: The Bureau of Land Management's Albuquerque District Grazing Advisory Board will meet on Friday, April 10, 1987, at 10:00 a.m., in the BLM Albuquerque District Office Building located at 435 Montano N.E., in Albuquerque, New Mexico. A field trip to the Farmington Resource Area is also scheduled for June 12, 1987.

The Board's agenda will include:

1. A discussion on the 1988 range improvement projects proposed for the Albuquerque District.

2. A discussion on the possibility of a Sikes Act Agreement with the New Mexico Department of Game and Fish to collect fees for habitat development in northern New Mexico.

3. A discussion of the agenda for the field trip scheduled to tour the Farmington Resource Area on June 12, 1987.

4. A discussion on current trespass and subleasing issues.

Time will be provided for public comments during the appropriate agenda items. Minutes of the meeting will be available for public inspection within 30 days following the meeting in the Albuquerque District Office located at 435 Montano N.E., Albuquerque, New Mexico 87107. For more information contact John Arwood, Range Conservationist, (505) 761–4554.

L. Paul Applegate,

District Manager.

[FR Doc. 87–5372 Filed 3–12–87; 8:45 am]

BILLING CODE 4310-FB-M

[UT-040-07-4352-12]

Off-Road Vehicle Closure, Utah

AGENCY: Department of the Interior, Bureau of Land Management, Cedar City District.

ACTION: Notice is hereby given that effective immediately, the Cedar City District, Bureau of Land Management (BLM), closes to all forms of off-road motorized vehicle use, the public lands known as the Price City Hills and Red Bluff dwarf bear-poppy areas. This closure is in accordance with the provisions of 43 CFR Part 8341.2.

The purpose of the closure is to protect dwarf bear-poppy populations identified in the 1987 Dwarf Bear-Poppy Habitat Management Plan and the 1985 Dwarf Bear-Poppy Recovery Plan. The dwarf bear-poppy was listed as endangered on November 6, 1979.

The legal description of the "closed" lands is as follows:

T. 43 S., R. 15 W.,
Sec. 7: S½, south of country road to Bloomington Hills Subdivision.
T. 43 S., R. 16 W.,
Sec. 4: SW¼;
Sec. 5: NE¼, S½;
Sec. 6: S½;
Sec. 8: N½, north of county road to Apex Mine;
Sec. 9: All, north of county road to Apex Mine;
Sec. 13: NE¼, SE¼SE¼,NE¼, east of Interstate 15.

The closure will remain in effect for the duration of the Habitat Management Plan.

ADDRESS: More information can be obtained from the Dixie Resource Area, 225 North Bluff Street, St. George, Utah 84770.

Dated: March 5, 1987.

Dennis Curtis,

Acting District Manager.

[FR Doc. 87–5493 Filed 3–12–87; 8:45]

BILLING CODE 4310-DQ-M

[ID-943-07-4212-11; I-17483 et al.]

Idaho; Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: Five Recreation and Public Leases or application for lease have been relinquished. The suitable classifications are no longer required and the land can be opened to the land and mining laws.

EFFECTIVE DATE: April 20, 1987.

ADDRESS: Bureau of Land Management 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Don Simpson, Idaho State Office, 208–334–1471.

The following-described lands were classified suitable for lease under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869) and the lease or application for lease has been relinquished:

Boise Meridian Idaho

T. 13 N., R. 19 E., (I–17483)
Sec. 4, N½ lot 3.
T. 6 S., R. 6 W., (I–19610)
Sec. 13, W½NW¼SW¼SW¼.
T. 21 N., R. 22 E., (I–21098)
Sec. 29, SE¼SE¼NE¼SE¼.
T. 6 N., R. 36 E., (I–21516)
Sec. 22, NE¼SE¼, E½NW¼SE¼.

Subject to valid existing rights, the provisons of existing withdrawals and the requirements of applicable laws, the lands will be open to the operation of the public land laws including the mining laws, at 9:00 a.m. on April 20, 1987.

Dated: March 6, 1987.

William E. Ireland,

Chief, Realty Operations Section

[FR Doc. 87–5494 Filed 3–12–87; 8:45 am]

BILLING CODE 4310-G-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b) (1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent Corporation: Brockway, Inc. (NY), 1 Enterprise Center, 225 Water Street, Jacksonville, FL 32202.

2. Wholly Owned Subsidiaries:

(a) Brockway Glass Co., Inc. (Division), McCullough Avenue, Brockway, PA 15824, Incorporated in the State of New York.

(b) Brockway Plastics, Inc., 9211 Forest Hill Avenue, Richmond, VA 23235–0110, Incorporated in the State of Delaware.

(c) Brockway Standard, Inc., 1215 Hightower Trail, Bldg. A., Atlanta, GA 30338, Incorporated in the State of Delaware.

(d) Captainer Plastics Corporation, 11 Cliffside Drive, Cedar Grove, NJ 07009, Incorporated in the State of New Jersey.

B. 1. Parent corporation and address of principal office: The Goodyear Tire & Rubber Company, 1144 East Market Street, Akron, OH 44316 (an Ohio corporation).

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

A. The Kelly-Springfield Tire Company, 800 Kelly Road, Cumberland, MD 21502 (a Maryland corporation).

B. Lee Tire & Rubber Company, 1001 South Trooper Road, P O Box 862, Valley Forge, PA 19482 (an Ohio corporation)

C. Reneer Films Corporation, Auburn, PA 17922 (a Delaware corporation).

D. The Goodyear Rubber Plantations Company, 1144 East Market Street, Akron, OH 44316 (an Ohio corporation).

E. Goodyear Western Hemisphere Corporation, 1144 East Market Street, Akron, OH 44316 (a Delaware corporation).

F. Cosmoflex, Incorporated, P.O. Box 994, Hannibal, MO 63401 (a Delaware corporation).
G. Long Mile Rubber Company, 5550 LBJ Freeway, Suite 200, Dallas, TX 75240 (a Delaware corporation).
H. Wingfoot Films Corporation, Garfield Avenue, NW, P O Box 98, Carrollton, OH 44615 (an Ohio corporation).

C.1. Parent Corporation: Norton Company, One New Bond Street, Worcester, MA 01606.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation.

(a) Norton International, Inc., One New Bond Street, Worcester, MA 01606 (Massachusetts)
(b) Carborundum Abrasives, Inc., Wheatfield, NY (Delaware)
(c) Norton Canada, Inc., Hamilton, Ont., Canada (Federal Incorporation in Canada "Canada Business Corp. Act")
(d) Carborundum Abrasives, Inc., Plattsville, Ont., Canada (Federal Incorporation in Canada "Canada Business Corp. Act")

D.1. Parent corporation: Rivendell Forest Products, Ltd., 5660 S. Greenwood Plaza Blvd., Suite 424, Englewood, CO 80111.

2. Wholly-owned subsidiary: Rivendell Transportation, Inc., Incorporated in the State of Colorado.

E.1. Parent corporation and address of principal office: Safeway Stores, Incorporated, 4th & Jackson Streets, Oakland, California 94660.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Safeway Canada Holdings, Inc., a Delaware corporation
(ii) Safeway Australia Holdings, Inc., a Delaware corporation
(iii) Safeway Stores 18, Inc., a Delaware corporation
(iv) Safeway Stores 23, Inc., a Delaware corporation
(v) Safeway Stores 25, Inc., a Delaware corporation
(vi) Safeway Stores 26, Inc., a Delaware corporation
(vii) Safeway Stores 27, Inc., a Delaware corporation
(viii) Safeway Stores 28, Inc., a Delaware corporation
(ix) Safeway Stores 29, Inc., a Delaware corporation
(x) Safeway Stores 30, Inc., a Delaware corporation
(xi) Safeway Stores 31, Inc., a Delaware corporation
(xii) Safeway Stores 35, Inc., a Delaware corporation
(xiii) Safeway Stores 38, Inc., a Delaware corporation
(xiv) Safeway Stores 39, Inc., a Delaware corporation
(xv) Safeway Stores 49, Inc., a Delaware corporation
(xvi) Safeway Stores 41, Inc., a Delaware corporation
(xvii) Safeway Stores 42, Inc., a Delaware corporation
(xviii) Safeway Stores 43, Inc., a Delaware corporation
(xix) Safeway Stores 44, Inc., a Delaware corporation
(xx) Safeway Stores 45, Inc., a Delaware corporation
(xxi) Safeway Stores 46, Inc., a Delaware corporation
(xxii) Safeway Stores 47, Inc., a Delaware corporation
(xxiii) Safeway Stores 48, Inc., a Delaware corporation
(xxiv) Safeway Stores 49, Inc., a Delaware corporation
(xxv) Safeway Stores 50, Inc., a Delaware corporation
(xxvi) Safeway Stores 51, Inc., a Delaware corporation
(xxvii) Safeway Stores 52, Inc., a Delaware corporation
(xxviii) Safeway Stores 53, Inc., a Delaware corporation
(xxix) Safeway Stores 54, Inc., a Delaware corporation
(xxx) Safeway Stores 55, Inc., a Delaware corporation
(xxxi) Safeway Stores 56, Inc., a Delaware corporation
(xxxii) Safeway Stores 57, Inc., a Delaware corporation
(xxxiii) Safeway Stores 58, Inc., a Delaware corporation
(xxxiv) Safeway Stores 59, Inc., a Delaware corporation
(xxxv) Safeway Stores 60, Inc., a Delaware corporation
(xxxvi) Safeway Stores 61, Inc., a Delaware corporation
(xxxvii) Safeway Stores 62, Inc., a Delaware corporation
(xxxviii) Safeway Stores 63, Inc., a Delaware corporation
(xxxix) Safeway Stores 64, Inc., a Delaware corporation
(xl) Safeway Stores 65, Inc., a Delaware corporation
(xli) Safeway Stores 66, Inc., a Delaware corporation
(xlii) Safeway Stores 67, Inc., a Delaware corporation
(xliii) Safeway Stores 69, Inc., a Delaware corporation
(xliv) Safeway Stores 70, Inc., a Delaware corporation
(xlv) Safeway Stores 72, Inc., a Delaware corporation
(xlvi) Safeway Stores 73, Inc., a Delaware corporation
(xlvii) Safeway Stores 74, Inc., a Delaware corporation
(xlviii) Safeway Stores 76, Inc., a Delaware corporation
(xlix) Safeway Stores 77, Inc., a Delaware corporation
(l) Safeway Stores 78, Inc., a Delaware corporation
(li) Safeway Stores 79, Inc., a Delaware corporation
(lii) Safeway Stores 80, Inc., a Delaware corporation
(liii) Safeway Stores 81, Inc., a Delaware corporation
(liv) Safeway Stores 82, Inc., a Delaware corporation
(lv) Safeway Stores 83, Inc., a Delaware corporation
(lvi) Safeway Stores 84, Inc., a Delaware corporation
(lvii) Safeway Stores 85, Inc., a Delaware corporation
(lviii) Safeway Stores 86, Inc., a Delaware corporation
(lix) Safeway Stores 88, Inc., a Delaware corporation
(lx) Safeway Stores 89, Inc., a Delaware corporation
(lxi) Safeway Stores 90, Inc., a Delaware corporation
(lxii) Safeway Stores 91, Inc., a Delaware corporation
(lxviii) Safeway Stores 92, Inc., a Delaware corporation
(lxiv) Safeway Stores 96, Inc., a Delaware corporation
(lxv) Safeway Stores 98, Inc., a Delaware corporation

F.1. The Parent Corporation is The Stanley Works, a Connecticut corporation, with a principal office at 1000 Stanley Drive, New Britain, Connecticut 06053.

2. The Wholly-owned subsidiaries of The Stanley Works which will participate in the Intercorporate Hauling Operations are:

(1) Stanley-Proto Industrial Tools, Inc., a Connecticut corporation, with principal offices at 14117 Industrial Park Blvd., N.E., Newton County Industrial Park, Covington, Georgia 30209.
(2) Stanley-Vidmar, Inc., a Connecticut corporation, with principal offices at 11 Grammes Road, Allentown, Pennsylvania 18103.
(3) Stanley-Bostitch, Inc., a Delaware corporation, with principal offices at Briggs Drive, East Greenwich, Rhode Island 02818.
(4) Taylor Rental Corporation, a Delaware corporation, with principal offices at 1000 Stanley Drive, New Britain, Connecticut 06053.
(5) Sutton-Landis Shoe Machinery Company, Inc., a Delaware corporation, with principal offices at 3500 Scarlett Oak Boulevard, St. Louis, Missouri 63122.

(6) National Hand Tool Corporation, a Delaware corporation, with principal offices at 12827 Valley Branch Lane, Dallas, Texas 75234.

(7) Hartco Company, an Illinois corporation with principal offices at 7707 North Austin Avenue, Skokie, Illinois 60076.

(8) Stanley-Vidmar Systems, Inc., a Delaware corporation, with principal offices at 10603 Chester Road, Cincinnati, Ohio 45215.

(9) Stanley Automatic Openers, Inc. a Delaware corporation, with principal offices at 5740 East Nevada, Detroit, Michigan 48234.

(10) Halstead Enterprises, Inc., a California corporation, with principal offices at 11355 Arrow Route, Rancho Cucamonga, California 91730

G.1. Parent corporation and address of principal office: Texas Air Corporation, Suite 4040, 333 Clay Street, Houston, TX 77002.

2. Wholly-owned subsidiaries which will participate in the operations, and state of incorporation:

Eastern Air Lines, Inc., Miami International Airport, Miami, FL 33148 Delaware

Continental Airlines, Inc., 2929 Allen Parkway, Houston, TX 77019 Delaware

Noreta R. McGee,

Secretary.

[FR Doc. 87-5450 Filed 3-12-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-17985]

General Electric Co.; Continuance in Control Exemption—RCA Corp.; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Correction to notice of proposed exemption.

SUMMARY: At 52 FR 6634, March 4, 1987, the Commission published a notice in this proceeding. The comment date was in error. The proper date is shown below.

DATE: Comments must be received by April 3, 1987.

Noreta R. McGee,

Secretary.

[FR Doc. 87-5451 Filed 3-12-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-No. 133X)]

The Baltimore and Ohio Railroad Co. and Home Avenue Railroad Co.; Exemption and Discontinuance of Service in Dayton, Montgomery County, OH

The Baltimore and Ohio Railroad Company and Home Avenue Railroad Company (Applicants) have filed a notice of exemption under 49 C.F.R. 1152 Subpart F—*Exemption Abandonments and Discontinuances of Service* for Home Avenue's abandonment of and B&O's discontinuance of service over a portion of the Home Avenue Branch between point of switch 77+92.9 and valuation station 35+50, a distance of approximately 0.80 mile in Dayton, Montgomery County, OH.

Applicants intend to consummate the proposed abandonment of and discontinuance of service over the line on or after April 4, 1987.

Applicants have certified (1) that no local traffic has moved over the line for a least 2 years and that the line does not handle overhead traffic, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on April 13, 1987, (unless stayed pending reconsideration). Petitions to stay must be filed by March 23, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 2, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Dated: March 2, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-5449 Filed 3-12-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

National Institute of Corrections Advisory Board; Meeting

Notice is hereby given that the National Institute of Corrections Advisory Board will meet on March 16, 1987, starting at 8:30 a.m., at the Hyatt Regency, Dallas/Ft. Worth Airport, Dallas, Texas 75261-9014. At this meeting (one of the regularly scheduled triannual meetings of the Advisory Board), the Board will receive its subcommittees' reports and recommendations as to future thrusts of the Institute.

Raymond C. Brown,

Director.

[FR Doc. 87-5373 Filed 3-12-87; 8:45 am]

BILLING CODE 4410-36-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be

enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky:
KY87-27 (Jan. 2, 1987) ..... p. 363.
Maryland:
MD87-15 (Jan. 2, 1987) ..... pp. 449-450.
New York:
NY87-2 (Jan. 2, 1987) ..... p. 689, pp. 691-692, pp.696, 700.
NY87-17 (Jan. 2, 1987) ..... pp. 826, 828.
Pennsylvania:
PA87-13 (Jan. 2, 1987) ..... p. 946.
Tennessee:
TN87-3 (Jan. 3, 1987) ..... p. 1088.

Volume II

Minnesota:
MN87-5 (Jan. 2, 1987) ..... p. 538.
Wisconsin:
WI87-1 (Jan. 2, 1987) ..... p. 1078.

Volume III

Arizona:
AZ87-1 (Jan. 2, 1987) ..... p. 10.
AZ87-2 (Jan. 2, 1987) ..... p. 16.
AZ87-3 (Jan. 2, 1987) ..... p. 30.
California:
CA87-4 (Jan. 2, 1987) ..... p. 74, pp. 79-80, pp. 95-97, p. 100a.
Idaho:
ID87-4 (Jan. 2, 1987) ..... p. 162.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 5th day of March 1987.

Nany M. Flynn,

Acting Assistant Administrator.

[FR Doc. 87-5300 Filed 3-2-87; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-27-C]

Consol Pennsylvania Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consol Pennsylvania Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1101-8(a) (water sprinkler systems; arrangement of sprinklers) to its Bailey Mine (I.D. No. 36-07230) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that at least one sprinkler be installed above each electrical control.

2. Petitioner has a combination belt starter box which is not located in the belt entry. Petitioner states that the placement of a sprinkler directly over an energized combination belt starter box containing high, medium and low voltages increases the potential for electrical shock.

3. As an alternate method, petitioner proposes that:

(a) All combination belt starter boxes will be properly ventilated with the intake air coursed directly into the return air course;

(b) The boxes will not be located in the belt entries but will be located in adjacent entries with the area well rock dusted and at least two feet from any combustible materials;

(c) The boxes will be enclosed in substantially constructed fireproof steel housings;

(d) The area around and near every combination belt starter box will be kept well rock dusted;

(e) Two ten pound or larger portable ABC-type dry chemical fire extinguishers will be located upwind from the electrical controls at every combination belt starter box location;

(f) Each box will be provided with under current, over current and short circuit protection to insure the integrity of the electrical components;

(g) Each box will be inspected during the pre-shift examination prior to the entry of persons into the area. The boxes will also be inspected weekly by a qualified person to assure safe operating conditions;

(h) All electrical controls will be separate from the belt entry by a concrete block stopping and will be separate from combustible material by two feet or a four inch masonry wall;

(i) A thermostat will be installed in the belt starter box that will activate the automatic control alarm, deenergize the system, and give an audible and visual alarm when the temperature reaches 20% above normal operating conditions. The alarm will be activated at a location where persons are on duty while miners are working in the affected area; and

(j) The electrical controls will be in a metal enclosure and will not employ the open, direct-current resistance-type acceleration.

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 April 13, 1987. Copies of the petition are available for inspection at that address.

Dated: March 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-5465 Filed 3-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-28-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 75.1193-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Amonate No. 31 Mine (I.D. No. 46-04421) located in McDowell County, West Virigina. 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. As an alternate method, petitioner proposes to install a low-level carbon monoxide (CO) detection system in all belt entries at each belt drive and tailpiece. The monitoring devices will be capable of giving warning of a fire for up to 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. A person will be assigned to look for trouble at 10 ppm and all persons will be withdrawn to a safe area at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is a two-way communication. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity to detect any malfunctions.

3. The CO system will be visually examined at least once each coal producing shift and tested for functioning properly weekly. The monitoring system will be calibrated with known concentrations of CO air mixtures at least monthly.

4. If the CO monitoring system is deenergized for rountine maintenance of 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.

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.

Requests 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 coments must be postmarked or received in that office on or before April 13, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

Dated: March 4, 1987.

[FR Doc. 87-5466 Filed 3-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-35-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 75.1704-2(a) (escapeway routes; examination; escapeway maps; drills) to its Buchanan Mine (I.D. No. 44-04856) located in Buchanan 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 statement follows:

1. The petition concerns the requirement that all travelable passageways designated as escapeways shall be located to follow the safest direct practical route to the nearest mine opening suitable for the safe evacuation of miners. Escapeways from working sections may be located through existing entries, rooms, or crosscuts.

2. Petitioner seeks a modification of the standard for a distance of approximately 200 feet in the existing intake escapeway on 1-West section, where a difficulty in supporting a roof cavity exists.

3. As an alternate method, petitioner proposes to use approximately 200 feet of the adjacent No. 2 track belt entry as the 1-West section intake escapeway. Ten self-contained self-rescuers will be stored on the inby side of the restricted fall area for use, if needed.

4. Petitioner states that the proposed alternate method provides a safer, more effective way to exit the 1-West section. This is due to the existence of a 35 foot high roof cavity in the 1-West section intake escapeway which cannot be safely supported.

5. Petitioner further states that the 1-West section lacks approximately 1,700 feet until it cuts through the 1-South entries. Upon completion of the necessary work in the area inby the roof fall, there will be no further need for an intake escapeway in 1-West.

6. 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 April

13, 1987. Copies of the petition are available for inspection at that address.

Dated: March 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-5467 Filed 3-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-38-C]

Golden Oak Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Golden Oak Mining Company, Route 2 Box 177, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Golden Oak No. 4 Mine (I.D. No. 15-15558) located in Letcher 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 cabs and canopies be installed on the mine's electric face equipment.

2. The mine is located in the Hazard No. 4 seam, with top and bottom rolls ranging from 1 to 6 feet difference in elevation.

3. Petitioner states that the use of a cab or canopy on the mine's electric face equipment would result in a diminution of safety for the miners affected because the canopies would limit the equipment operator's visibility, would restrict the operator's mobility, and would shear off roof bolts, thus creating unsupported top.

4. For these reasons, petitioner requests a modification of the standard in mining heights of 50 inches or less.

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 April 13, 1987. Copies of the petition are available for inspection at that address.

Dated: March 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-5469 Filed 3-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-22-C]

Golden Oak Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Golden Oak Mining Company, Route 2 Box 177, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Hollybush No. 8 Mine (I.D. No. 15-13587) located in Letcher 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 cabs or canopies be installed on the mine's electric face equipment.

2. The coal height is 30 inches. With the removal of 10 inches of bottom rock and 10 inches of top rock a working height of 50 inches is created. However, the petitioner is not able to cut any deeper into the top sandrock due to its hardness.

3. Petitioner states that the use of canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because the canopies would limit the equipment operator's visibility, would restrict the operator's mobility and could destroy roof support.

4. 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 April 13, 1987. Copies of the petition are available for inspection at that address.

Dated: March 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-5468 Filed 3-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-1-M]

Montana Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Montana Resources, Inc., 600 Shields Avenue, Butte, Montana 59701 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Continental Mine (I.D. No. 24-00338) located in Silver Bow County, Montana. 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 heavy duty mobile equipment be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

2. Petitioner states that the haul trucks are often operated in close proximity to each other. When their back-up alarms sound simultaneously confusion exists and the alarms become ineffective. There is additional confusion when the alarms of smaller support equipment (dozers, graders, etc.) are sounding in the same area.

3. Petitioner further states that many injuries have occurred to persons designated as spotters as they attempted to signal when it was safe to backup. To install alarms that would be audible above the surrounding noise level would also lessen the warning of alarms on support equipment.

4. As an alternate method, petitioner proposes to equip all trucks with highly visible back up lights which operate automatically when trucks are in reverse. These adequately light up the areas behind the truck and would forewarn persons of the trucks direction of travel. In addition, shovel operators and truck drivers use audible horns to communicate. A single horn from a shovel signifies a "full load". A single horn from a truck represents "start up" or if in congested areas (i.e. garage) "pulling forward". Two sounds represent "reverse" which is also used in congested areas.

5. In further support of this request, petitioner states that vehicles are always parked on the operators side of the truck; trucks are always given right-of-way; radios have been installed in all vehicles so that a safe means of communication can be obtained; and all mobile equipment is equipped with a horn.

6. 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 April 13, 1987. Copies of the petition are available for inspection at that address.

Dated: March 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-5470 Filed 3-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-32-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 350, Morganfield, Kentucky 42437 has filed a petition to modify the application of 30 CFR 75.402 (rock dusting) to its Camp No. 1 Mine (I.D. No. 15-02709) located in Union 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 all underground areas of a coal mine, except those areas in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within 40 feet of all working faces, unless such areas are inaccessible or unsafe to enter.

2. As an alternate method, petitioner proposes to apply water to the roof, ribs and floor of all freshly mined working faces in lieu of maintaining rock dust to within 40 feet of the working faces during production. This watering will be accomplished upon completion of the cut by leaving water sprays on as the continuous miner is backed out of the working place. In further support of this request, petitioner states that:

(a) Upon completion of the production shift and prior to the next production shift, the working faces and adjoining crosscuts will be rock dusted;

(b) The application of water will allay any potential coal float dust particles, thus eliminating the hazard of dust ignition and/or explosion;

(c) The continuous miner is operated remotely and is equipped with a wet bed scrubber system for dust control. The miner is also equipped with a continuous methane monitoring system that will deenergize the miner in a mixture of two percent or more methane; and

(d) All working sections are well ventilated and no methane has been detected on the working sections or main exhaust fan.

3. 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 April 13, 1987. Copies of the petition are available for inspection at that address.

Dated: March 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-5471 Filed 3-12-87; 8:45 am]

BILLING CODE 4510-43-M

[FR Docket No. M-87-36-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 350, Morganfield, Kentucky 42437 has filed a petition to modify the application of 30 CFR 75.1704 (escapeways) to its Camp No. 1 Mine (I.D. No. 15-02709) located in Union 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 at least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person and which are to be designated as escapeways at least one of which is ventilated with intake air, shall be provided from each working section continuous to the surface escape drift opening, or continuous to the escape shaft or slope facilities to the surface, as appropriate, and shall be maintained in safe condition and properly marked.

2. As an alternate method, petitioner proposes to utilize the escape hoist for haulage of supplies and/or parts.

3. Petitioner states that more frequent use would ensure that the hoist is properly maintained and operating at all times. Use of this facility for parts would eliminate the miners exposure to a heavily timbered, rail barred, and cribbed 4 miles (approximate) of trolley wire haulage at any time parts are needed from the surface. Parts that are transported will not exceed the maximum weight capacity recommended by the manufacturer.

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 April 13, 1987. Copies of the petition are available for inspection at that address.

Dated: March 5, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-5472 Filed 3-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-33-C]

Safety Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Safety Coal Company, Inc., P.O. Box 134, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-14633) located in Knox 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 requirements that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use handheld deck mounted continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a handheld continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

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 April 13, 1987. Copies of the petition are available for inspection at that address.

Dated: March 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-5473 Filed 3-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-21-C]

Sextet Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard

Sextet Mining Corporation, 1822 North Main Street, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its West Hopkins Mine (I.D. No. 15-15691) located in Hopkins 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 systems device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to install a low-level carbon monoxide (CO) detection system in belt entries at each belt drive and tailpiece. Where the belt drive changes directions but is dumping directly on the tailpiece, one monitoring device will be installed where the tailpiece and belt will be on the same split of air and the air will not be used as intake. The monitoring devices will be capable of giving warning of a fire for up to 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 for monitoring electrical continuity to detect any malfunctions.

3. The CO system will be visually examined at least once each coal producing shift and tested for functioning properly. The monitoring system will be calibrated with known concentrations of CO air mixtures at least monthly.

4. If the CO monitoring system is deenergized for routine maintenance of 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.

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 April 13, 1987. Copies of the petition are available for inspection at that address.

Dated: March 4, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-5474 Filed 3-12-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-34-C]

Westerman Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westerman Coal Company, Inc., P.O. Box 134, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its No. 2 Mine (I.D. No. 15-14763) located in Knox 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 a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand-held deck mounted continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually

deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equpped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

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 pitition 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 April 13, 1987. Copies of the petition are available for inspection at that address.

Dated: March 4, 1987.

Particia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-5475 Filed 3-12-87; 8:45 Am]

BILLING CODE 4510-43-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The following package is 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). The current valid OMB clearance expires on March 31, 1987.

Subject: 12 C.F.R. 701.31 Nondiscrimination Requirements (3133-0068).

Abstract: This regulation requires a federal credit union to keep a copy of the property appraisal. It also requires that a federal credit union using geographic factors in evaluating real estate loan applications disclose such factors on the appraisal and state its justification.

Frequency: Maintenance of property appraisals and disclosures will be as required in the above Abstract.

Burden: The average time required for compliance with the information collection portion of this regulation is expected to be 15 minutes for each mortgage loan.

Respondents: Federal Credit Unions.

OMB Desk Officer: Robert Fishman.

Copies of the above information collection clearance package 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 the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503; Attn: Robert Fishman.

Date: March 5, 1987.

Rosemary Brady,

Secretary of the NCAU Board.

[FR Doc. 87-5495 Filed 3-12-87; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-390 and 50-391]

Tennessee Valley Authority Watts Bar Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an extension of the latest construction completion dates specified in Construction Permit Nos. CPPR-91 and CPPR-92 issued to Tennessee Valley Authority (applicant) for the Watts Bar Nuclear Plant, Units 1 and 2. The facility is located at the applicant's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

Environmental Assessment

Identification of Proposed Action: The proposed action would extend the latest construction completion date of Construction Permit No. CPPR-91 to September 1988 and the latest construction completion date of Construction Permit No. CPPR-92 to January 1990. The proposed action is in response to the applicant's request dated January 29, 1987.

The Need for the Proposed Action: The proposed action is needed because the constrution of the facility is not yet fully completed. The applicant states that completion of Unit 1 will continue to be delayed pending resolution of outstanding issues including those raised through the employee concern program and welding evaluation program. Resolution of these issues may require reinspection, analysis, and possible modifications to the facility prior to fuel load. Completion of this work will require approximately 18 months.

In addition, certain engineering and construction resources originally allocated for completion of work at Watts Bar have been diverted to the restart programs for Sequoyah and Browns Ferry Nuclear Plants. This reallocation of resources is expected to impact the Watts Bar fuel load schedule by 3 to 6 months, depending on the restart date of the Sequoyah facilities.

Because Unit 2 is approximately 75% complete, it is estimated an additional 16 months of work after the completion of Unit 1 will be required to complete Unit 2.

Environmental Impacts of the Proposed Action: The environmental impacts associated with the construction of the facility have been previously discussed and evaluated in TVA's Final Environmental Statement (FES) issued on November 9, 1972 for the construction permit stage which covered construction of both units.

Since the proposed action involves extending the construction permits, radiological impacts are not affected by this action. There are no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction.

Since the construction of Unit 1 is essentially 100% complete and Unit 2 is approximately 75% complete, most of the construction impacts discussed in the FES have already occurred.

The reinspection and rework that may be required will not have any significant environmental impact. This activity will all take place within the facility and will not result in impacts to previously undisturbed areas.

There are no new significant impacts associated with this extension. However, impacts previously assessed (community and traffic impacts) will continue in order to complete plant construction and rework.

Based on the foregoing, the NRC staff concludes that the proposed extension of the construction permits would have no significant environmental impact. Since this action would only extend the period of construction as described in the FES, it does not involve any different impacts or a significant change to those impacts described and analyzed in the original environmental impact statement.

Alternatives Considered: A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction to the facility. This would result in denial of the benefit of power production. This option would not eliminate the environmental impacts of construction already incurred.

If construction were halted and not completed, site redress activities would restore some small areas to their natural states. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of use of a facility that is nearly completed. Therefore, this alternative is rejected.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the FES for Watts Bar.

Agencies and Persons Contacted: The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. THe NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension dated January 29, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room, Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland, this 10th day of March 1987.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, PWR Project Directorate #4, Division of PWR Licensing–A.

[FR Doc. 87–5460 Filed 3–12–87; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Regulatory Commission

Draft NUREG–1150 for Public Comment: Issuance and Availability

The U.S. Nuclear Regulatory Commission published draft NUREG–1150, "Reactor Risk Reference Document," for public comment on March 2, 1987.

Draft NUREG–1150 discusses estimates of risk and frequencies of severe core damage accidents for five nuclear reactors of differing designs. The information in NUREG–1150 and its supporting contractor reports will provide much of the technical basis needed to support several regulatory initiatives including implementation of the Commission's Severe Accident Policy Statement and Safety Goals.

The 150 day public comment period ends on August 21, 1987.

Single copies of draft NUREG–1150 can be obtained, free of charge, to the extent of supply, by writing to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Division of Division of Information Support Services. Telephone requests cannot be accommodated.

The comment letters and draft NUREG–1150 will be made available for inspection and copying in the Commission's Public Document Room, 1717 H St., NW., Washington, DC. There is a fee for copying.

Public comments should be sent to Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(5 U.S.C. 552(a))

Dated at Bethesda, MD this day of March 10, 1987.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Acting Director, Division of Reactor System Safety, Office of Nuclear Regulatory Research.

[FR Doc. 87–5461 Filed 3–12–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289]

Metropolitan Edison Co. et al. (Three Mile Island Nuclear Station, Unit No. 1); Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied, in part, a request by GPU Nuclear Corporation, et al. (the licensees) for an amendment to Facility Operating License No. DPR–50 issued to GPU Nuclear Corporation, et al. for operation of the Three Mile Island Nuclear Station, Unit No. 1 (TMI–1), located in Dauphin County, Pennsylvania. Notice of consideration of issuance of this amendment was published in the **Federal Register** on February 4, 1987 (52 FR 3515).

The purpose of the licensees' amendment request was to incorporate new and revised Technical Specification (TS) requirements for operability and surveillance for the Emergency Feedwater (EFW) System at TMI–1. The revisions were necessary due to significant system modifications made to comply with TMI–1 restart commitments and NUREG–0737, Action Item II.E.1. Included in this proposal was a request to manually bypass automatic initiation of EFW on low once-through steam generator level during low power physics testing and when reactor power is below 30%

The principal objection of the Commission is that this operational bypass would be manually removed when the conditions which allow it to be implemented were exceeded. In accordance with NUREG–0737, Item II.E.1, the upgraded EFW auto initiation design should meet the criteria of IEEE 279–1971. This standard would require that operational bypasses are to be automatically removed when the conditions which allowed them to be implemented were exceeded. The licensees' proposed alternative of manual action on a permanent basis is not acceptable. Manual action does increase operational flexibility, but it also increases the risk that the system will be improperly aligned at higher power levels. The HSPS is a new system for controlling OTSG level. There is a potential of inadvertent EFW initiation at low power levels during various transients due to the close proximity of the EFW auto initiation setpoint on low OTSG level and the low level limit of the OTSG level control. To allow system familiarization during one cycle of operation, the NRC will allow the licensee to manually insert a bypass of auto initiation of EFW on low OTSG level when reactor power is below 30% under the conditions of a normal reactor startup or shutdown. Although this bypass is not automatically removed as power level increases above 30%, adequate design and procedural controls will ensure that the bypass switch is in the proper position for operation at 30% power levels and above. When the EFW auto start circuitry is in the bypass position, an alarm is indicatd in the control room. The startup and shutdown procedures require the operator to acknowledge by signature the status of the EFW system at 30% reactor power. These two factors will insure the bypass switch is not in the bypass position at higher power levels. The NRC staff is denying the use of the bypass switch under conditions other than normal startup or shutdown. Additionally, the NRC staff is granting permission to use the bypass switches under restrictive circumstances for Cycle 6 operation

only. Use of any bypass capability after Cycle 6 operation will require a new amendment.

All other provisions of the amendment request have been approved by Amendment No. 124 dated March 9, 1987. Notice of Issuance of Amendment No. 124 will be published in the Commission's biweekly **Federal Register** notice.

The licensees were notified of the Commission's denial of the proposed TS change by letter dated March 9, 1987.

By April 13, the licensees may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene 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.

A copy of any petitions should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr. of Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

For further details with respect to this action, see: (1) The application for amendment dated January 23, 1987, (2) the Commission's letter to GPU Nuclear Corporation dated March 9, 1987, and (3) the Commission's Safety Evaluation issued with Amendment No. 124 to DPR–50 dated March 9, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, Washington DC 20555 and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B.

Dated at Bethesda, Maryland, this 9th day of March, 1987.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate #6, Division of PWR Licensing-B.

[FR Doc. 87–5462 Filed 3–12–87; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, Washington, DC 20549

Extension

Form 20–F

File No. 270–156

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearnace Form 20–F relating to the registration or reporting by foreign issuers (17 CFR 249.220f). Approximately 133 respondents are effected and estimated 2110 burden hours are required to complete each form.

Submit comments to OMB Desk Officer, Mr. Robert Neal (202) 395–7340, Office of Information and Regulatory Affairs, Commerce & Lands Branch, Room 3228 NEOB, Washington, DC 20503.

March 9, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5488 Filed 3–12–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–24334]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 5, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 30, 1987, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy Initiatives, Incorporated, et al. (70–7058)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, and Energy Initiatives, Incorporated ("EII"), 95 Madison, Avenue, Morristown, New Jersey 07960, a wholly owned subsidiary of JCP&L, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By this post-effective amendment, EII requests authority to make investments, during the period beginning with the effectiveness hereof and ending on December 31, 1996 in cogeneration qualifying facilities under the Public Utilities Regulatory Policies Act located within the United States, and other qualifying facilities within the service territories of any qualifying facilities located within the service territories of any of the companies which are parties to the Pennsylvania-New Jersey-Maryland Interconnection Agreement ("PJM"). Such investments may be made by way of the acquisition of stock, participation in general or limited partnerships, joint ventures or project financings, the making or guaranteeing of loans, or involvement in other contractual arrangements. EII proposes to make such investment in an amount up to $7 million. Any corporation, partnership, joint venture, or other business entity in which EII invests may itself engage in financing through project financing, short-term and long-term borrowings, sales of stock or capital contributions, or any other means and in such amounts as may be deemed appropriate. EII further proposes to perform feasibility studies and provide engineering or other services for a fee in connection with actual or proposed ownership or investment in qualified facilities and load management system and energy storage system projects.

EII also proposes to engage in load management system and energy storage system projects within the service territories of companies that are parties to PJM.

The Columbia Gas System, Inc. et al. (70–7176)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its subsidiaries, Columbia Gas System Service Corporation, Columbia LNG Corporation, Columbia Alaskan Gas Transmission, Columbia Hydrocarbon Corporation, Columbia Coal Gasification Corporation, The Inland Gas Company, Inc., Tristar Ventures Corporation (formerly Columbia Gas Brokerage Corporation), 20 Montchanin Road, Wilmington, Delaware 19807, Big Marsh Oil Company, Columbia Natural Resources, Inc., 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, Columbia Gas of Kentucky, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of New York, Inc., Columbia Gas of Pennsylvania, Inc., Columbia Gas of Virginia, Inc., 200 Civic Center Drive, Columbus, Ohio 43215, Columbia Gulf Transmission Company, 3805 West Alabama Avenue, Houston, Texas 77027, Columbia Gas Development of Canada Ltd., 639–5th Avenue, SW., Calgary, Alberta, Canada T2P 0M9, Columbia Gas Development Corporation, 5847 San Felipe, Houston, Texas 77057, Commonwealth Gas Pipeline Corporation, Commonwealth Propane, Inc., and Commonwealth Gas Services, Inc. ("Commonwealth Services"), 200 South Third Street, Richmond, Virginia 23219, have filed a post-effective amendment to their application-declaration subject to Section 6(a), 6(b), 7, 9, 10, 12(b) and 12(f) of the Act and Rules 43, 45, 50(a)(2) and 50(a)(5) thereunder.

By order dated December 20, 1985 (HCAR No. 23921), the Columbia system companies were authorized to extend their Intercompany Financing, External Short-Term Financing and Money Pool Program through December 31, 1987. In particular, Commonwealth Services was authorized to issue, and Columbia to acquire, up to $4 million aggregate principal amount of long-term promissory notes, in order for Commonwealth Services to finance part of its 1986 and 1987 capital expenditure programs. Authorization was also given for Commonwealth Services to receive and repay short-term advances, from Columbia or from the Intrasystem Money Pool, in an aggregate principal amount not to exceed $9 million at any one time outstanding.

The 1985 order reserved jurisdiction over the transaction involving Commonwealth Services, pending authorization by the State Corporation Commission of Virginia ("Virginia Commission"). Subsequently, jurisdiction over the 1986 transactions was released by supplemental order dated March 31, 1985 [sec], HCAR No. 24059). The supplemental order reserved jurisdiction over the 1987 transactions pending authorization by the Virginia Commission.

Currently, Commonwealth Services' total 1986 and 1987 capital expenditures, previously estimated at $8.7 million, are estimated at $19.8 million. To finance its 1987 capital expenditures, Commonwealth Services now proposes, subject to approval by the Virginia Commission, to issue, and Columbia proposes to acquire, up to 90,000 shares of common stock ($50 par value) and up to $9,500,000 of long-term promissory notes for a total long-term financing program of $14 million. Commonwealth Services continues to seek authorization to receive and repay short-term advances, from Columbia or the Intrasystem Money Pool, in an aggregate principal amount not to exceed $9 million at any one time outstanding.

Central and South West Corporation (70–7365)

Central & South West Corporation ("CSW"), 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201, a registered holding company, and five of its operating subsidiaries Central Power and Light Company ("CP&L"), P.O. Box 2121, Corpus Christi, Texas 78403, Southwestern Electric Power Company ("SWEPCO"), P.O. Box 21106, Shreveport, Louisiana 71156, Public Service Company of Oklahoma ("PSO"), P.O. Box 201, Tulsa, Oklahoma 74102, West Texas Utilities Company ("WTU"), P.O. Box 841, Abilene, Texas 79604, 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201 and Transok, Inc. ("Transok"), P.O. Box 3008, Tulsa, Oklahoma 74101, (collectively "the Operating Subsidiaries"), and Central and South West Services Inc., ("CSWS"), a wholly owned service company subsidiary, have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

CSW and the subsidiaries seek a continuation through March 31, 1989 of a short term borrowing program authorized by the Commission by order of April 3, 1985, HCAR No. 23650. The program would make funds available to the subsidiaries for interim financing of their capital programs and their other working capital needs. Funds would also be available to CSW or the subsidiaries to repay previous borrowings.

The borrowing program would be coordinated through the use of a money pool. Funds for the money pool would be available from surplus funds in the treasuries of the operating subsidiaries, surplus funds from the treasury of CSW, proceeds from the sale of commercial paper notes by CSW or from bank borrowings by CSW.

The maximum anticipated borrowing levels requested by CSW and its subsidiaries are as follows: CSW—$600,000,000, CP&L Company—$200,000,000, PSO—$100,000,000, SWEPCO—$150,000,000, WTU—$50,000,000, CSWS—$25,000,000 and Transok—$80,000.

To provide funds for the money pool, CSW requests authorization to issue and sell commercial paper notes, subject to a limitation on aggregate principal amount at any one time outstanding of $600,000,000. The notes would have varying maturities of not more than 9 months from date of issue and could be issued and sold by CSW from time to time through March 31, 1989.

CSW and the subsidiaries also request authorization to borrow money from banks, in the event that such borrowing would produce a lower cost of money than the issue of CSW's commercial paper notes, and to the extent that the surplus funds of CSW and the subsidiaries are insufficient to meet the subsidiaries' requests for short-term loans. The borrowings would be evidenced by promissory notes maturing no more than 24 months from the date of issue and bearing interest at a rate no higher than the effective cost of money for unsecured prime commercial bank loans.

In addition, CSW requests authorization to borrow funds managed by trust departments of banks if such borrowings result in a cost of money equal to or less than that available from the sale of commercial paper or other bank borrowings.

CSW requests that its commercial paper transactions be excepted from the competitive bidding requirements of Rule 50 pursuant to paragraph (a)(5).

New England Electric System, et al. (70–7362)

New England Electric System ("NEES"), a registered holding company, and its subsidiaries, Granite State Electric Company ("Granite State"), Massachusetts Electric Company ("Mass Electric"), The Narragansett Electric Company ("Narragansett"), NEES Energy, Incorporated ("NEES

Energy"), New England Electric Transmission Corporation ("NEET"), New England Energy Incorporated ("NEEI"), New England Power Company ("NEP") and New England Power Service Company ("NEPSCO"), (collectively, "Subsidiaries"), 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration pursuant to Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

NEES and each of the Subsidiaries seek authorization to lend money to the NEES system money pool ("Money Pool") under the terms approved by the Commission in its order dated November 5, 1986 (HCAR No. 24232). In addition, each of the Subsidiaries, with the exception of NEES Energy and NEEI, seeks authority to borrow from the Money Pool and/or to issue short-term notes to banks, such notes to mature in less than one year, through October 31, 1988. Mass Electric and NEP also propose to issue short-term commercial paper in the form of unsecured promissory notes having maturities of not in excess of 270 days, under an exception from the competitive bidding requirements, through October 31, 1988. Borrowings by the Subsidiaries are proposed to be up to the following maximum amounts outstanding: (1) Granite State, $7 million; (2) Mass Electric, $75 million; (3) Narragansett, $40 million; (4) NEET, $10 million; (5) NEP, $300 million; and (6) NEPSCO, $8 million.

New England Electric System (70–7363)

New England Electric System ("NEES"), 24 Research Drive, Westborough Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration pursuant to Section 6(a) and 7 of the Act.

By order dated September 18, 1985 (HCAR No. 23832), NEES was authorized to issue and sell, through March 31, 1987, short-term notes to banks up to $100 million aggregate principal amount at any time outstanding. NEES now proposes that it be authorized to extend this authorization through October 31, 1988.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5427 Filed 3–12–87; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications of Philadelphia Stock Exchange, Inc. for Unlisted Trading Privileges and of Opportunity for Hearing

March 5, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Templeton Emerging Markets Fund, Inc. Common Shares, No Par Value (File No. 7–9774)

American Barrick Resources Corp. Common Shares, No Par Value (File No. 7–9775)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 26, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5425 Filed 3–12–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23923; File No. SR–PSE–86–27]

Proposed Rule Change by the Pacific Stock Exchange Incorp.; Relating to the Type of Discretion an Options Floor Broker May Hold Over the Volume of an Order

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 2, 1986, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Rule VI

Discretionary Transaction

Sec. 64. [(A)] *(a)* No Floor [b]*B*roker shall execute or cause to be executed any transaction on this Exchange with respect to which transaction such Floor Broker is vested with discretion as to*:* (1) The choice of the class or series of options to be bought or sold[,]; (2) the *stated* number of option contracts to be bought or sold[,]; *or* (3) *the ability to increase the stated volume; or* (4) whether any such transaction shall be one of purchase or sale. *A Floor Broker may be vested with discretion as to the ability to decrease the stated volume of option contracts.*

[B] *(b)* A Market Maker shall not exercise discretion in an account unless he has a direct interest in such account.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regualtory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Rule VI, section 64 limits the amount of discretion an options Floor Broker may hold over an order. The PSE believes that the original intent of the Section relating to discretion over the number of contracts to buy or sell went to limiting the maximum amount. The Rule provides that a Broker cannot exercise discretion over the series or to buy or to sell. The Exchange also wishes to limit the maximum amount of contracts a Broker may buy or sell. However, the current language could prohibit a Broker from working a "Not Held" order. Common practice with respect to a market "Not Held" order

holds that a Broker will execute up to one half of the order's stated volume requirement and then "take time" in executing the remainder of such order. Under this practice the Broker is then exercising discretion over the amount of contracts he is executing over a given time frame. While the Exchange never intended to prohibit such activity, a literal reading of the current language of section 64(a) might tend to result in a finding that such practice is forbidden.

The Exchange believes that the original intent of the Section was to prevent a Broker from exercising discretion as to the maximum amount of contracts which would be bought or sold for a particular account. Consequently, the Exchange proposes the amendment to make clear its original intent.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will facilitate transactions in securities and remove a possible impediment to a free and open market. The continuing restriction on discretion by Brokers should continue to serve as a protection of investors and the public interest, and to just and equitable principles of trade, in that unfair advantage will not be given Brokers and certain accounts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period:

(i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or

(ii) As to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 3, 1987.

Dated: March 9, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5424 Filed 3-12-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24186; File No. SR-MSTC-87-2]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Company Relating to Commercial Paper Division's Fee Change; Notice and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 2, 1987, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Midwest Securities Trust Company proposes to raise the transaction fee in the Commercial Paper Division from $2.00 to $3.00 per transaction for all transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The fee increase will better cover the actual cost associated with transactions through the commercial Paper Division (the "Division"). The Division has been in operation for approximately one year. During that period, MSTC has analyzed the cost of providing the service and the fee increase is the result of such analysis.

The proposed fee increase is consistent with section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 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 rule 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 3, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 6, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5423 Filed 3-12-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15603; 812-6308]

ML Venture Partners II, L.P., et al.; Notice of Application

March 5, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act" or the "Act").

APPLICANTS: ML Venture Partners II, L.P. ("Partnership"), MLVP II Co., L.P. ("Managing General Partner") and Merrill Lynch Venture Capital Inc. ("Management Company").

SUMMARY OF APPLICATION: Applicants seek an order (1) determining that the Independent General Partners of the Partnership are not interested persons, within the meaning of Section 2(a)(19), of the Partnership, the Managing General Partner, the Management Company, and/or Merrill Lynch, Pierce, Fenner & Smith Inc., the principal underwriter, solely by reason of their being general partners of the Partnership or of ML Venture Partners I, L.P., and that service as an Independent General Partner of the Partnership will not cause an Independent General Partner of the Partnership to be an interested person of MLVP I; and (2) exempting the proposed acquisition of certain initial venture capital investments by the Partnership from the Management Company from the provisions of Section 57(a).

Relevant 1940 Act Section: Exemption requested *under* Sections 6(c) and 57(c) *from* Sections 2(a)(19) and 57(a).

Filing Dates: The application was filed on February 21, 1986, and amended on November 25, 1986, February 18, 1987 and March 2, 1987.

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 March 27, 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, Washington, D.C. 20549. Applicants, 717 Fifth Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Carson G. Frailey (202) 272-3037, or Special Counsel Karen L. Skidmore, (202) 272-3023, Office of Investment Company Regulation.

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).

Applicants' Representations

1. The Partnership is a newly-formed Delaware limited partnership, governed by an Agreement of Limited Partnership dated as of February 4, 1986 ("Partnership Agreement"); the Partnership has elected to be a business development company pursuant to Section 54 of the 1940 Act. Thus, the Partnership is subject to Sections 55 through 65 of the 1940 Act and to those sections made applicable to business development companies by Section 59 of the 1940 Act. The investment objective of the Partnership is to seek long-term capital appreciation by making venture capital investments. The Partnership will terminate not later than December 31, 2001, and is an investment vehicle of limited duration which will have definite stages of development.

2. The Partnership filed a registration statement under the Securities Act of 1933 on Form N-2 (File No. 33-3220 which includes a copy of the Partnership Agreement) with respect to a public offering of up to 120,000 units of limited partnership interest ("Units"), designed to raise a maximum amount of $120 million. That registration statement was declared effective on February 10, 1987. The proceeds of the offering will be invested in 30 to 45 venture capital investments over a period of up to three to four years. Each of these investments will be liquidated once it reaches a state of maturity when disposition can be considered (typically four to seven years from the dates of investment). The proceeds of liquidation will not be reinvested except in limited circumstances but will be distributed to the Partners.

3. The Managing General Partner, a New York limited partnership, will be responsible for the venture capital investments of the Partnership but its actions will be subject to the supervision of the Individual General Partners. The Management Company, a Delaware corporation which is the controlling general partner of the Managing General Partner, will perform the management and administrative services necessary for the operation of the Partnership pursuant to a management agreement. Both the Managing General Partner and the Management Company will be registered an investment advisers under the Investment Advisers Act of 1940 ("Advisers Act"). The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."), the parent of Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") which will be the selling agent of the Units on a "best efforts" basis.

4. The General Partners of the Partnership will consist of the Individual General Partners (partners who are natural persons) and the Managing General Partner. A majority of the General Partners will be Independent General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the 1940 Act), and one General Partner who is an individual and who is "an affiliated person" of the Managing General Partner, and/or any person who may become a successor or additional

Individual General Partner as provided in the Partnership Agreement.

5. The Individual General Partners solely will manage the Partnership, except in regard to those specific activities of the Partnership for which the Managing General Partner will be responsible. The Individual General Partners will provide overall guidance and supervision of Partnership operations and perform the same functions as directors of business development company organized in corporate form; the Independent General Partners will assume the responsibilities and obligations which the 1940 Act imposes on the disinterested directors of a business development company.

6. The Partnership Agreement provides that the General Partners are to be elected at annual meetings of the Limited Partners ans serve for annual terms. If at any time the number of Independent General Partners is reduced to less than three, the remainng Individual General Partners shall, within 90 days, designate one or more successors so as to restore the number of Independent General Partners to at least three. The Partnership Agreement provides that the Individual General Partners may be removed either (i) for cause by the action of two-thirds of the remaining Individual General Partners; (ii) by failure to be re-elected by the Limited Partners; or (iii) with the consent of a majority in interest of the Limited Partners. The Managing General Partner may be removed either (i) by a majority of the Independent General Partners; (ii) by failure to be re-elected by the Limited Partners; or (iii) with the consent of a majority in interest of the Limited Partners.

7. The Managing General Partner undertakes that it will not resign, or withdraw, from the Partnership unless certain specified procedures as followed and a successor Managing General Partner has been appointed, and consented to be the Limited Partners.

8. The Partnership's Limited Partners have no right to control or otherwise participate in the management of the Partnership's business, but may exercise certain rights and powers under the Partnership Agreement, including voting rights and giving consents and approvals. It is the opinion of Delaware counsel for the Partnership that the existence of exercise of these voting rights does not subject the Limited Partners to liability as general partners under the Delaware Revised Uniform Limited Partnership Act. In addition,the Partnership Agreement obligates the General Partners to take all action which may be necessary or appropriate to protect the limited liability of the Limited Partners. The Partnership does not presently have an insurance policy that would provide coverage to persons who become Limited Partners, but it undertakes that it will periodically review the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

9. The Independent General Partners are "interested persons" of the Partnership within the meaning of Section 2(a)(19) of the 1940 Act by virtue of being partners of the Partnership, which makes them "affiliated persons" of the Partnership within the meaning of section 2(a)(3) of the 1940 Act. The Independent General Partners could also be construed tobe "interested persons" of the Partnership by virtue of being "interested persons" of an investment adviser and principal underwriter to the Partnership because the Independent General Partners are "affiliated persons" of the Managing General Partner by virtue of being "co-partners" of the Managing General Partner. The Managing Partner could be construed to be an investment adviser of the Partnership. Furthermore, the Managing General Partner is udner "common control" with the Management Company, an investment adviser to the Partnership, and Merrill Lynch, the principal underwriter with respect to the sale of the Units, which asks the Managing General Partner an affiliated person of the Management Company and Merrill Lynch. While Section 2(a)(19)(iii) specifically refers to an affiliated person of an investment adviser, it could be alleged the Managing General Partner and the Management Company are in essence the same person.

10. Applicants request that the Partnership and its Independent General Partners be exempted from the provisions of Section 2(a)(19) to the extent that the Independent General Partners would be deemed to be "interested persons" of the Partnership, the Managing General Partner and the Management Company and/or Merrill Lynch solely because such Independent General Partners are general partners of the Partnership and co-partners of the Managing General Partners. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the disinterested directors of an incorporated registered investment company. Section 2(a)(19) excludes from the definition of "interested person" of an investment company those individuals who would be "interested persons" solely because they are directors of the investment company; there is no equivalent exception for partners or co-partners of an investment company.

11. Applicants also request that this order determine that an Independent General Partner of the Partnership not be deemed an "interested person" of the Partnership solely by reason of the fact that such individual also serves as an Independent General Partner of "MLVP I", a business development company organized in 1982. *See In the Matter of ML Venture Partners I, L.P.,* Investment Company Act Release No. 12601 (August 12, 1982). (Order determining that such individuals are not "interested persons" of MLVP I). The Partnership expects that one of its Independent General Partners will be an individual who also serves as an independent general partner of MLVP I and that such relationship will be beneficial to the Partnership to the same extent that registered investment companies often have one or more directors serve as directors of more than one investment company managed by the same investment adviser. However, since MLVP I might be considered under common control with the Partnership, and thus an "affiliated person" of the Partnership, the Partnership requests that the order requested with respect to Section 2(a)(19) additionally determine that an Independent General Partner is not an "interested person" of the Partnership by virtue of being an independent general partner of MLVP I. The Partnership also requests that such order determine that an independent general partner of MLVP I not be deemed an "interested person" of MLVP I solely by reason of serving as an Independent General Partner of the Partnership.

12. It is submitted that it is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act to grant the requested exemptions from the provisions of Section 2(a)(19) of the Act.

13. The profits and losses of the Partnership will be determined annually. Under the Partnership Agreement, if the aggregate of investment income and net realized gains and losses from venture capital investments is positive, calculated on a cumulative basis, the Managing General Partner will receive an allocation of income and capital gains or losses for such year so that it will receive 20% of the aggregate of such income and gains or losses, calculated on a cumulative basis over the life of the Partnership through such year. It should be noted that the foregoing "Managing General Partners Allocation" has been included in the Partnership Agreement on the basis exclusively of an opinion of

legal counsel to the Partnership that such allocation would not violate the provisions of Section 205 of the Advisers Act. Applicants have not requested Commission review or approval of such opinion letter and the Commission expresses no opinion as to counsel's interpretation that Section 205 of the Advisers Act permits the aforementioned allocation.

14. Applicants also request an order under Section 57(c) of the Act exempting from the provisions of Section 57(a) of the Act, the proposed acquisition by the Partnership from the Management Company of certain initial venture capital investments on the terms and conditions discussed below. It is contemplated that a period as long as four to six months from the date hereof may elapse before the public offering of Units is consummated and the Partnership receives the proceeds from the sale of Units. During this period, it is expected that several venture capital opportunities suitable for the Partnership (i.e., within the investment objectives and policies stated in its Prospectus) will come to the attention of the Managing General Partner. The Partnership will not have the funds to make such investments during this period, and such investment opportunities could be lost to the Partnership if not then acquired. Therefore, it is proposed that the Management Company acquire such venture capital investments, structured as if the Managing General Partner were negotiating for the Partnership to make the acquisition directly.

15. Any such initial investments which are the subject of the order herein requested will be acquired in arm's length transactions and will not involve any entity which is an affiliated person (within the meaning of Section 2(a)(3) of the Act) of the Management Company, or any affiliated person thereof. The Management Company will hold such investments on behalf of the Partnership until the sale of Units takes place, at which time the Partnership will acquire such investments from the Management Company at the lesser of (i) the value of the investment at the time it is acquired by the Partnership, as determined by the Managing General Partner, subject to review by the Independent General Partners, or (ii) the cost to the Management Company of purchasing and holding such investment. With respect to clause (ii), such cost shall be the original purchase price paid by the Management Company, plus permitted carrying costs as described below. No carrying costs will be paid by the Partnership in respect of the period prior to the later of (1) the date of acquisition of the proposed investment by the Management Company, or (2) the date the Independent General Partners of the Partnership were notified of the investment and given the opportunity to object to such acquisition by the Management Company on behalf of the Partnership. For purposes of the order requested herein, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period for which carrying costs are permitted to be paid until the date the Partnership acquires the investment, or (ii) the effective cost of borrowings by ML & Co., Inc. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds" which it calculates on a monthly basis by dividing its consolidated financing expenses by the total cost of borrowings.

16. The Partnership will not be obligated to acquire such investments if the acquisition of the investments is not approved by the Independent General Partners, or if the public offering is not consummated. If the Partnership does not acquire the investments, the Management Company will retain the investments for its own account. If the Partnership acquires any of such investments, it will do so within 90 days after the closing of its public offering. If the acquisition of the investments is approved by the Independent General Partners, the Management Company must transfer each investment so acquired in its entirety to the Partnership following the sale of the Units to the public. Each such investment and the cost thereof shall be disclosed in the Prospectus or a supplement thereto.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Any investments made by the Managing General Partner on behalf of the Partnership before the public offering of Units is consummated and the Partnership has received the proceeds from the sale of Units, will be acquired on the terms described above.

2. Under the Partnership Agreement, the Partnership is authorized to make in-kind distributions of its portfolio securities to its Partners. However, the Partnership agrees not to make any in-kind distributions of portfolio securities to its Partners until it has obtained either a "no-action" letter from the staff of the Commission confirming the Partnership's interpretation of section 205 of the Advisers Act (i.e., that unrealized gains or losses attributable to securities distributed in-kind to Partners are properly deemed realized upon such distribution) or, in the alternative, the Partnership has obtained an exemption from Section 205 by Commission order issued pursuant to Section 206A of the Advisers Act, permitting the Partnership to deem such gains or losses to be realized upon in-kind distributions.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-5428 Filed 3-12-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15610; 812-6396]

Security Equity Life Insurance Co.; et al.; Application for Exemption

March 6, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Security Equity Life Insurance Company ("SELIC"), Security Equity Variable Life Separate Account (the "Variable Account"); and SG Equities Corporation.

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rules 6e-2 and 22c-1 thereunder.

Summary of Application: In connection with the proposed issuance of Single Premium Variable Life Insurance Contracts and any successor Contract ("Contracts") through the Variable Account, Applicants seek the relief necessary to permit: (1) The deduction of a deferred Contract load from the Contract's account value; (2) Life expectancy and the deduction for the cost of insurance in determining what is deemed to be sales load to be based upon the 1980 Commissioner's Standard Ordinary Mortality Table; (3) The deduction of the Contract loading from the Contract's account value; and (4) The deduction of insurance charges from the Contract's account value.

Filing Date: The application was filed on May 27, 1986, and amended on February 5, 1987.

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 March 31, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) 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. Security Equity Life Insurance Company, the Variable Account, and SG Equities Corporation Court House Square, Binghamton, New York 13902–1625.

FOR FURTHER INFORMATION CONTACT: Staff Attorney, Clifford E. Kirsch at (202) 272–3032 or Special Counsel, Lewis B. Reich at (202) 272–2061 (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. SELIC is planning to issue the Contracts through the Variable Account, which is registered as a unit investment trust and invests in portfolios of the Scudder Variable Life Investment Fund (the "Fund"). The Contracts require the payment of a single premium to put a Contract into effect. An extra premium, in addition to the single premium, may be charged to cover an insured in a substandard risk classification.

2. Subject to certain adjustments, the death benefit will equal the greater of the Variable Death Benefit and the Guaranteed Minimum Death Benefit as of the date of death of the insured. The Guaranteed Minimum Death Benefit equals the Contract face amount. The Variable Death Benefit equals the Contract face amount adjusted for investment performance of the sub-accounts of the Variable Account selected by the contractowner for the investment of the Contract's investment value.

3. Certain deductions are made from the single premium to arrive at the net premium. That Contract loading consists of: (i) an administrative expense charge ($3.50 per thousand dollars of face amount for the Policy, with a minimum of $175 and a maximum of $500); (ii) a sales charge (4% of the single premium); (iii) a risk charge to provide for the possibility that the insured will die at a time when the Variable Death Benefit would be less than the Guaranteed Minimum Death Benefit of the Contract (1.2% of the single premium); and (iv) a state premium tax charge (2.5% of the single premium). The Contract loading is initially part of the account value and one tenth of the loading is deducted from the account value on each of the first through tenth Contract anniversaries. On any Monthly Valuation Date subsequent to the expiration of the "free look" period, the account value is equal to the cash value on that date plus, during the first ten policy years, the amount of unrecovered Contract loading.

4. The cost of providing insurance protection for a Contract is calculated daily in determining cash value, and is deducted monthly from the account value. Cost of insurance rates are based upon the insured's attained age, sex and risk classification and vary monthly; therefore the cost of insurance charge varies monthly. Cost of insurance rates are guaranteed never to be greater than the guaranteed cost of insurance rates shown in the Contract, which are based on the 1980 Commissioner's Standard Ordinary Mortality Table.

5. SELIC charges the sub-accounts of the Variable Account for the mortality and expense risk SELIC assumes. The charge is made daily at an effective annual rate of .60% of the value of each sub-account's assets that come from the Contracts. A charge for income taxes may be imposed if it becomes appropriate.

Deduction of Policy Loading from Account Value

6. Applicants request exemption from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rules 6e–2(b)(1), (b)(12), (b)(13), (c)(4), and 22c–1 thereunder, to the extent necessary to permit the deduction of the policy loading from the account value over the initial ten years of the Contract.

7. Applicants assert that relief is appropriate because imposition of the policy load in the form of a deferred charge is more favorable to the contract-owner than a charge that is initially deducted entirely from the single premium. Applicants state that under the deferred load the amount of investors' money available for investment is not reduced as in the case of a front-end sales load and that the total amount of sales load charged to any contractowner under applicants' proposed sales load structure is lower than that permitted by Rule 6e–2(b)(13).

Use of 1980 Commissioners' Standard Ordinary Mortality Table

8. Applicants request an exemption from Section 27(a) and Rule 6e–2(b)(1), (b)(13), and (c)(4) on the same terms specified in Rule 6e–2(b)(13) and 6e–2(c)(4) except that life expectancy and the deduction for the cost of insurance in determining what is deemed to be sales load shall be based upon the 1980 Commissioners' Standard Ordinary Mortality Table ("1980 CSO Table"). Applicants state that the use of the 1980 CSO Table generally results in lower cost of insurance deductions than the use of the 1958 CSO Table.

Deduction of Remaining Policy Loading Upon Surrender

9. The application, through incorporation by reference of the registration statements for the Contract, states that a Contract may be surrendered for its net cash value at any time while the insured is living and that upon surrender, any remaining policy loading will be withdrawn.

10. Applicants request exemption from Sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) and Rules 6e–2(b)(12), (b)(13) and 22c–1 to the extent necessary to permit the remaining Contract loading to be deducted from the Contract's account value upon surrender.

11. Applicants state that imposition of the charge for Contract loading in this form is more favorable to contractowners than a charge that is initially deducted entirely from the single premium or cash value in the first Contract year. First, the amount of the contractowner's investment in the Variable Account is not reduced as it is when this charge is taken in full from the single premium payment. Second, the total amount charged to any contractowner is no greater than if this charge were taken in full in the first Contract year.

Insurance Charges

12. Applicants request exemption from Sections 26(a) and 27(c)(2) of the Act and Rule 6e–2 thereunder to the extent necessary to permit deduction of the insurance charges from account value. Applicants state that proposed amendments to Rule 6e–2 would eliminate any doubt that the Rule provides these exemptions.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5428 Filed 3–12–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC-15605; 812-6479]

Wellington Fund, Inc.; Application for Exemption

March 5, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: Wellington Fund, Inc., The Windsor Funds, Inc., Vanguard World Fund, Inc., Gemini II, Inc., Explorer Fund, Inc., Explorer II, Inc., W.L. Morgan Growth Fund, Inc., Wellesley Income Fund, Inc., Vanguard Fixed Income Securities Fund, Inc., Vanguard Money Market Reserves, Inc., Vanguard Qualified Dividend Portfolio I, Inc., Vanguard Qualified Dividend Portfolio II, Vanguard Qualified Dividend Portfolio III, Vanguard Index Trust, Vanguard Municipal Bond Fund, Inc., Trustees' Commingled Fund, Naess & Thomas Special Fund, Inc., Vanguard Specialized Portfolios, Inc., PRIMECAP Fund, Inc., Vanguard California Insured Tax-Free Fund, Vanguard New York Insured Tax-Free Fund, Vanguard Pennsylvania Insured Tax-Free Fund, Vanguard Convertible Securities Fund, Inc., Vanguard Bond Market Fund, Inc., Vanguard Quantitative Portfolios, Inc., and all future investment companies of the Vanguard Group of Investment Companies ("Vanguad Group"), Vanguard STAR Fund, (collectively "Funds"), and The Vanguard Group, Inc. ("Vanguard").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) for an order permitting a joint transaction under Section 17(d) of the Act and Rule 17d-1 thereunder.

SUMMARY OF APPLICATION: The funds seek an order to permit them to deposit uninvested daily cash balances into a single joint account and to participate in a proposed joint trading account.

FILING DATE: The Application was filed on September 15, 1986, and amended on December 8, 1986, and January 16, 1987.

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 March 30, 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, N.W., Washington, D.C. 20549. The Applicants, 1300 Morris Drive, P.O. Box 876, Valley Forge, Pennsylvania 19482.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Richard Pfordte at (202) 272-2811 or Special Counsel Karen Skidmore at (202) 272-3023, Office of Investment Company Regulation.

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).

Applicants' Representations

1. The Funds are investment companies registered under the 1940 Act and are, except for Vanguard STAR Fund, members of The Vanguard Group. Vanguard STAR Fund invests its assets exclusively in securities of certain Vanguard Funds. Vanguard is a wholly-owned service company of the member Funds of The Vanguard Group. The Funds receive investment advice from an external investment advisory firm and/or internally from Vanguard on an at-cost basis.

2. Vanguard, as transfer agent for the Funds, deposits purchase checks for Fund shares in a purchase account. Monies deposited are not allocated to a particular Fund until the close of the business day of receipt. Such money is not available for investsment by a Fund until wired to each Fund's custodian bank the following day. The Funds earn income on the purchase account by negotiating a rate of interest on the monies held or, in the case where the depository bank also acts as the Fund's custodian, by receiving a credit against custodian fees. In addition, Funds usually have cash balances in a custodian bank which is not invested in portfolio securities on a given day. Each Fund invests its daily custodian cash balances by negotiating and entering into individual repurchase agreements.

3. Applicants believe that they can reduce expenses, earn a higher rate of return on their cash balances, and eliminate certain inefficiencies by pooling their cash balances held in the purchase and custodian accounts and investing these cash balances in one or more large repurchase agreements.

4. Applicants propose to establish a joint trading account ("Account"). Each Fund will automatically transfer its uninvested cash remaining after the conclusion of its daily trading activity into such custodial or sub-custodial Account. The Account will not be distinguishable from any other accounts maintained by a Fund with its custodian bank or a designated sub-custodian bank except that monies from a Fund will be deposited on a commingled basis. The Account will not have any separate existence which will have indicia of a separate legal entity. The Account will provide a convenient way of aggregating individual transactions which would otherwise require daily management by each Fund of its uninvested cash balances.

5. Cash in the Account will be invested in repurchase agreements collateralized by obligations issued or guaranteed as to principal and interest by the government of the United States or by any of its agencies or instrumentalities, and satisfying the uniform standards set by the Funds for such investments. Any repurchase agreement will have, with rare exceptions, an overnight or over-the-weekend duration, and in no event will it have a duration of more than seven days.

6. All investments held by the Account will be valued on an amortized cost basis. Each Fund will use the average maturity of the Account for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such Account on that day.

7. In order to assure that a Fund can only use its balance of the Account, Funds will not be allowed to create a negative balance in the Account for any reason. A Fund's decision to invest in the Account will be solely at the Fund's option. A Fund will not be obligated to invest in the Account nor to maintain any minimum balance. A Fund may withdraw all, or a portion, of its investment in the Account at any time. In addition, a Fund will retain the sole rights of ownership of any of its assets, including any interest payable on such assets invested in the Account. Each Fund's investment in the Account will be documented daily on the books of the Fund as well as on the books of the Fund's custodian. Applicants believe that a Fund's investment in the Account will not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceedings, or of any other participant Fund in the Account. Each Fund's liability on any repurchase agreement purchased by the Account will be limited to its interest in such repurchase agreement.

8. Each Fund will participate in the income earned or accrued in the Account on the basis of the percentage of the total amount in the Account on any day represented by its share of the Account.

9. The investment of cash balances in the Account will be administered by the officers and employees of Vanguard without payment of any fee or compensation. The investment adviser to each Fund having an external investment adviser will determine the amount of any uninvested cash balances, constituting a part of each Fund's assets, to be invested in the Account each day and such Fund will pay no additional advisory fees for the management of the Account. The investment advisory fee payable under the Fund's investment advisory agreement with its respective investment adviser will be based upon a specified fee rate applied against the value of the Fund's net assets, which will include the value of any assets the Fund has invested in the Account. Vanguard will determine the amount of any uninvested cash balances to be invested in the Account for those Funds for which it provides investment advisory services on a at-cost basis.

10. The Account will be administered within the fidelity bond coverage required by Section 17(g) of the 1940 Act and Rule 17g–1 thereunder. The Board of Directors or Trustees of each Fund and Vanguard will evaluate the Account arrangements annually, and will vote to continue the Account only if they determine that there is a reasonable likelihood that the Account will benefit the Fund and its shareholders.

11. Applicants believe that each Fund will participate in the Account on the same basis as every other Fund and in conformity with each Fund's fundamental investment objectives and restrictions. Participation in the Account will not result in any conflicts of interests between any of the Funds or between a Fund and its investment adviser. Future investment company members of The Vanguard Group will be required to participate in the Account on the same terms and conditions as the existing Funds.

12. Applicants state that the Funds will earn a higher return by participating in the Account rather than by individual accounts because it is possible to negotiate a rate of return on a large repurchase agreement which is greater than the rate of return which can be negotiated for smaller repurchase agreements. The Funds will collectively save approximately $54,000 in yearly custodian transaction fees at present asset levels.

Applicants' Conditions

Applicants' agree to operate the Account in accordance with the representations set forth in paragraphs 4 through 10 above and agree that such representations may be made express conditions of the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–5429 Filed 3–12–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

City Capital Corp.; Notice of Surrender of License

[License No. 09/14–0060]

Notice is hereby given that City Capital Corporation, 9080 Santa Monica Blvd., Suite 201, Los Angeles, California 90069 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). City Capital Corporation was licensed by the Small Business Administration on June 8, 1962.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on February 26, 1987, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: March 6, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87–5386 Filed 3–12–87; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council, Colorado; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Denver, will hold a public meeting at 9:00 a.m., on Monday, March 23, 1987, at the Byron G. Rogers Federal Building, 1961 Stout Street, Room 244, Denver, Colorado, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Dratin Hill, Jr., District Director, U.S. Small Business Administration, 721 19th Street, Room 426, Denver, Colorado—(303) 844–3673.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 6, 1987.

[FR Doc. 87–5387 Filed 3–12–87; 8:45 am]

BILLING CODE 8025–01–M

Region IX Advisory Council, Hawaii; Public Meeting

The U.S. Small Business Administration, Region IX Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 9:00 a.m. on Wednesday, April 1, 1987, at the Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Conference Room 7121 (7th Floor), Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T.C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850 (808) 541–2990.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 6, 1987.

[FR Doc. 87–5388 Filed 3–12–87; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council, Montana; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 9:30 a.m. on Friday, April 24, 1987, at the Federal Office Building, Room 289, 301 South Park, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626—(406) 449–5381.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 6, 1987.

[FR Doc. 87–5389 Filed 3–12–87; 8:45 am]

BILLING CODE 8025–01–M

[License No. 09/09-0239]

Brentwood Capital Corp.; Notice of Filing of an Application for an Exemption Under the Conflict of Interest Regulation

Notice is hereby given that Brentwood Capital Corporation (Brentwood), 11661 San Vicente Boulevard, Los Angeles, California 90049, a Federal License under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903(b) (1987) for an exemption from the provisions of the cited Regulation.

Subject to SBA approval, Brentwood Capital Corporation proposes to provide funds to Digital Sound Corporation, 2030 Alameda Padre Sierra, Santa Barbara, California 93102 for working capital use.

The proposed financing is brought within the purview of section 107.903(b) of the Regulations because Brentwood III, Brentwood Associates IV, L.P., and Evergreen II, L.P., associates of Brentwood, own greater than 10 percent of Digital Sound Corporation and therefore Digital Sound Corporation is considered an Associate of Brentwood Capital Corporation as defined by section 107.3 of the Regulations.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L. Street, NW., Washington DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Santa Barbara, California area.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: March 6, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-5390 Filed 3-12-87; 8:45 am]

BILLING CODE 8025-01-M

New West Partners II; Issuance of a Small Business Investment Company License

[License No. 09/09-0373]

On August 13, 1986, a notice was published in the **Federal Register** (Vol 51, No. 156, Pg. 2904) stating that an application has been filed by New West Partners II, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR. 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business September 13, 1986, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(C) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0373 on February 17, 1987, to New West Partners II to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 6, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-5391 Filed 3-12-87; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02-0507]

Pyramid Investors, Inc.; Notice of Application for a Small Business Investment Company License

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. 661, et seq.) (the Act) has been filed by Pyramid Investors, Inc., (the Applicant) 280 Park Avenue, New York, New York 10015, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The officers, director and sole shareholder of the Applicant are as follows:

Robert L. Barbanell, Apt. 6F, 400 East 54th Street, New York, NY 10022—Chairman of the Board and Director

L. Duane Kirkpatrick, 3934 Washington Street, San Francisco, CA 94118—President and Director

John S. Popovitch, 22 Dolphin Lane, West Islip, NY 11795—Treasurer

Charles J. Hill, 10 Longview Road, Groton-on-Hudson, New York, NY 10520—Vice President, Secretary and Director

Ralph L. MacDonald, 14 Rosehill Avenue, Armonk, NY 10504—Director

Bankers Trust New York Corporation, 280 Park Avenue, New York, NY 10017—Sole Shareholder

The Applicant will be a wholly owned subsidiary of Bankers Trust New York Corporation (BTNY), a bank holding company within the meaning of the Bank Holding Company Act of 1956. Bankers Trust Company, the sixth largest commercial bank in New York City, is also a wholly owned subsidiary of BTNY. There is no person known to hold beneficially 10 percent or more of the voting securities of BTNY.

The Applicant, a Delaware Corporation, will begin operations with $10,000,000 of Paid-in capital and paid-in surplus. The Applicant will conduct its activities primarily in the States of New York and California (600 Montgomery St., San Francisco, CA 94111) but will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this Notice shall be published in a newspaper of general circulation in the New York City and San Francisco areas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 6, 1987.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 87-5392 Filed 3-12-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending March 6, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44715

Parties: Trans World Airlines, Inc. and USAir Group, Inc.

Date Filed: March 4, 1987.

Subject: Application of Trans World Airlines, Inc. requests approval under section 408 of the Act, and Part 303 of the Department's Procedural Regulations of its acquisition of Control of USAir Group, Inc.

Application of Trans World Airlines, Inc. requests expedited approval by the Department to permit TWA to acquire up to 51 percent of the voting securities of USAir Group, Inc., on the condition that TWA place all of the shares in an independent voting trust.

Docket No. 44719

Parties: USAIR Group, Inc.
Date Filed: March 5, 1987.
Subject: Application of USAir Group, Inc. requests the Department to approve a voting trust agreement that would permit Group's purchase of up to 51 percent (on a fully diluted basis) of the common shares of Piedmont Aviation, Inc., a North Carolina corporation, on the condition that Group place all shares of Piedmont common stock that it acquires in excess of 9.9 percent of the total number of shares outstanding into an independent voting trust pending the Department's approval of the acquisition of Piedmont by Group.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-5430 Filed 3-12-87; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending March 6, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44705

Parties: Members of International Air Transport Association
Date Filed: March 2, 1987
Subject: Tokyo-Cebu Fare
Proposed Effective Date: April 1, 1987

Docket No. 47706 R-1—R-16

Parties: Members of International Air Transport Association
Date Filed: March 2, 1987
Subject: US-Europe Fares
Proposed Effective Date: April 1, 1987/ May 1, 1987 (US-Ireland)

Docket No. 44709

Parties: Members of International Air Transport Association
Date Filed: March 3, 1987
Subject: Baggage Charges—Nicosia-Tel Aviv
Proposed Effective Date: April 1, 1987

Docket No. 44710

Parties: Members of International Air Transport Association
Date Filed: March 3, 1987
Subject: Excursion Fares Within So. America
Proposed Effective Date: April 1, 1987

Docket No. 44718

Parties: Members of International Air Transport Association
Date Filed: March 5, 1987
Subject: Revalidate TC1 Longhaul
Proposed Effective Date: April 1, 1987

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-5431 Filed 3-12-87; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending March 6, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44711

Date Filed: March 3, 1987.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 31, 1987.
Description: Application of Interstate Airlines, Inc. pursuant to section 401(h) of the Act requests the Department to expeditiously approve the transfer to InterState of the certificate of public convenience and necessity held by Air One, Inc. InterState also requests that, in approving the transfer, the Department specifically find that InterState is fit, willing and able to provide the passenger air transportation which Air One's certificate authorizes.

Docket No. 44713

Date Filed: March 3, 1987.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 31, 1987.
Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for an amendment to its certificate for Route 129 or for a new certificate which would authorize Northwest to engage in scheduled air transportation of persons, property and mail on an unrestricted basis between Northern Marianas/Guam and Japan. The new segment, as amended, would read; Between Guam, the Mariana Islands and a point or points in Japan.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 87-5432 Filed 3-12-87; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Docket 44664; Order 87-3-31]

Application of Jet Express, Inc.; Authority To Resume Operations

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue as order finding the carrier fit to resume operations; and reissuing the carrier's certificate.

DATE: Persons wishing to file objections should do so no later than March 16, 1987.

ADDRESSES: Responses should be filed in Docket 44664 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590, and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Janet A. Davis, Air Carrier Fitness Division, P-56, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-2341.

Dated: March 9, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-5433 Filed 3-12-87; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

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 New Orleans Aviation Board for New Orleans International 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 February 25, 1987.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Noise Abatement Specialist, ASW–611C, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, (817) 624–5609.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for New Orleans International Airport are in compliance with applicable requirements of Part 150, effective February 25, 1987.

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 airport 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 New Orleans Aviation Board. The specific maps under consideration are depicted in Exhibits L and M, pages 103 and 105, of Final Report: Volume 1, Noise Exposure Maps, dated September 1986. The FAA has determined that these maps for New Orleans International Airport are in compliance with applicable requirements. This determination is effective on February 25, 1987. 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 who submitted those maps, or with those public agencies and planning agencies with whom consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and 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, Southwest Region Office, Airports Division, ASW–611C, P.O. Box 1689, Fort Worth, TX 76101

Mr. James H. Chubbuck, Director of Aviation, New Orleans Aviation Board, New Orleans International Airport, P.O. Box 20007, New Orleans, LA 70141

Questions may be directed to the individual named above under the heading **"FOR FURTHER INFORMATION CONTACT."**

Issued in Fort Worth, Texas, February 25, 1987.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 87–5365 Filed 3–12–87; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA) (Utilized as an Advisory Committee); Reestablishment

Notice is hereby given of the reestablishment of the Radio Technical Commission for Aeronautics (RTCA) as an advisory committee utilized by the Federal Aviation Administration and other Government agencies. The Associate Administrator for Development and Logistics, Federal Aviation Administration, is the sponsor.

The membership of RTCA comprises over 140 Government and industry organizations. At this time, eight Government agencies, the Departments of State, Commerce, Army, Navy and Air Force; the Federal Aviation Administration and U.S. Coast Guard of the Department of Transportation; and the National Aeronautics and Space Administration, participate in RTCA. Private sector members include Aeronautical Radio, Incorporated; Air Line Pilots Association; Air Transport Association of America; Aircraft Owners and Pilots Association; National Business Aircraft Association; General Aviation Manufacturers. Association; Electronics Industries Association Members; and Affiliated Independent Members.

The objective of RTCA is to advance the art and science of aeronautics through the investigation of all available or potential applications of the telecommunication art, their coordination with allied arts, and the adaptation thereof to recognized operational requirements. To achieve this objective, RTCA, through its special committees, seeks solutions to problems involving the application of electronics and telecommunications to aeronautical operations and frequently recommends technical performance standards and operational requirements for consideration by Government, industry, and aviation users.

The Secretary of Transportation has determined that the utilization of RTCA is necessary in the public interest in connection with the performance of duties imposed on the Federal Aviation Administration by law. Except as provided in section 10(d) of the Federal Advisory Committee Act (86 Stat. 770), meetings of all RTCA committees, when

utilized as an advisory committee, will be open to the public.

Issued in Washington DC, on March 6, 1987.

Edwin S. Harris, Jr.,

Associate Administrator for Development and Logistics.

[FR Doc. 87-5366 Filed 2-12-87; 8:45 am]

BILLING CODE 4910-13

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 6, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980. Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0143.
Form Number: IRS Form 2290.
Type of Review: Extension.
Title: Heavy Vehicle Use Tax Return.
Description: Form 2290 is used to compute and report the tax imposed by section 4481 on the highway use of motor vehicles which have a taxable gross weight of at least 55,000 pounds. The information is used to determine whether the taxpayer has paid the correct amount.
Respondents: Individuals or households, Farms, Businesses.
Estimated Burden: 659,290 hours.

OMB Number: 1545-00831.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Netherlands.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 13 hours.

OMB Number: 1545-0832.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Canada.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 50 hours.

OMB Number: 1545-0833.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Sweden.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: ΔIndividuals or households, Businesses.
Estimated Burden: 25 hours.

OMB Number: 1545-0834.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Ireland.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 20 hours.

OMB Number: 1545-0835.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Italy.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 50 hours.

OMB Number: 1545-0836.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Norway.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 13 hours.

OMB Number: 1545-0837.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Germany.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 16 hours.

OMB Number: 1545-0838.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Japan.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 25 hours.

OMB Number: 1545-0839.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Australia.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 13 hours.

OMB Number: 1545-0840.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Finland.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 13 hours.

OMB Number: 1545-0841.
Form Number: None.

Type of Review: Extension.
Title: Regulations Under Tax Conventions—Austria.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 13 hours.
OMB Number: 1545–0842
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—United Kingdom.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 125 hours.
OMB Number: 1545–0843.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Belgium.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 6 hours.
OMB Number: 1545–0844.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Greece.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 13 hours.
OMB Number: 1545–0845.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—France.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 50 hours.
OMB Number: 1545–0846.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Switzerland.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 13 hours.
OMB Number: 1545–0847.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—New Zealand.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 13 hours.
OMB Number: 1545–0848.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Denmark.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 25 hours.
OMB Number: 1545–0849.
Form Number: None.
Type of Review: Extension.
Title: Regulations Under Tax Conventions—Pakistan.
Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax treaty and to facilitate the administration and enforcement of the tax laws of the United States.
Respondents: Individuals or households, Businesses.
Estimated Burden: 5 hours.

Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87–5408 Filed 3–12–87; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 49
Friday, March 13, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:42 a.m. on Wednesday, March 4, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) accept the bid submitted by First Security Bank and Trust Company, Charles City, Iowa, an insured State nonmember bank, for the purchase of certain assets of and the assumption of the liability to pay deposits made in The First State Bank, Rockford, Iowa, which was expected to be closed by the Superintendent of Banking for the State of Iowa, on Wednesday, March 4, 1987; (2) approve the application of First Security Bank and Trust Company, Charles City, Iowa, for consent to purchase certain assets of and assume the liability to pay deposits made in The First State Bank, Rockford, Iowa, and for consent to establish the sole office of The First State Bank as a branch of First Security Bank and Trust Company; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(B)(1) accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) Sealy National Bank, Sealy, Texas, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, March 5, 1987; (b) First National Bank in West Concord, West Concord, Minnesota, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, March 5, 1987; (c) Liberty Bank, Houston, Texas, which was expected to be closed by the Banking Commissioner for the State of Texas on Thursday, March 5, 1987; and (d) First National Bank of Sapulpa, Sapulpa, Oklahoma, which was expected to be closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, March 5, 1987.

At that same meeting, the Board also considered matters related to the possible closing of another insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 10, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-5501 Filed 3-11-87; 8:53 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, March 17, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Memorandum regarding the Corporation's liquidation activities.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for consent to merge and establish fourteen branches:

Summit Bank, Fort Wayne, Indiana, an insured State nonmember bank, for consent to merge, under its charter and title, with Anthony Wayne Bank, Fort Wayne, Indiana, and for consent to establish the fourteen offices of Anthony Wayne Bank as branches of the resultant bank.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 10, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-5502 Filed 3-11-87; 8:53 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, March 17, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities and to establish two branches:

The North Fork Bank and Trust Company, Mattituck, New York, an insured State nonmember bank, for the consent to purchase certain assets of and assume the liability to pay deposits made in the Main Street and Roanoke branches located at Riverhead, New York, of Anchor Savings Bank FSB, Hewlett, New York, a non-FDIC-insured institution, and for consent to establish those two branches of Anchor Savings Bank FSB as branches of The North Fork Bank and Trust Company.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,954–SR
Valencia Bank, Placentia, California
Case No. 46,955–SR (Amendment)
First Continental Bank and Trust Company of Del City, Del City, Oklahoma
Case No. 46,956–NR
The First National Bank and Trust Company of Enid, Enid, Oklahoma

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum regarding the Corporation's budget.

Memorandum regarding the Reserves for Losses.

Memorandum regarding delegations of authority with respect to liquidation activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: March 10, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–5503 Filed 3–11–87; 8:53 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 87–4733.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, March 12, 1987, 10:00 a.m.

THE FOLLOWING CHANGES HAVE BEEN MADE:

1. The meeting has been rescheduled to start at 2:00 p.m.
2. The following item was added to the agenda:
   Cost Analysis on S.2—The Boren/Byrd Bill

* * * * *

DATE AND TIME: Tuesday, March 17, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Tuesday, March 19, 1987, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC, Ninth Floor.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Daters for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1987–4—William J. Brown on behalf of the Senator John Glenn Committee.
Draft Advisory Opinion 1987–6—Thomas R. Daly on behalf of American Chiropractic Association.
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202–376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 87–5478 Filed 3–10–87; 4:37 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:30 a.m., Wednesday, March 18, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 10, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–5499 Filed 3–10–87; 4:58 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 6905, March 5, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10: a.m., Wednesday, March 11, 1987.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Matters relating to the Plans administered under the Federal Reserve System's employee benefits program. (This matter was originally announced for a closed meeting on February 18, 1987.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: March 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–5570 Filed 3–11–87; 1:23 pm]

BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 3:00 p.m., Friday, March 6, 1987.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Discussion of Commission Reauthorization.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 326–2179, Recorded Message: (202) 326–2711.

Emily H. Rock,

Secretary.

[FR Doc. 87–5529 Filed 3–11–87; 12:12 p.m.]

BILLING CODE 6750–01–M

Corrections

Federal Register
Vol. 52, No. 49
Friday, March 13, 1987

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.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180717; FRL-3156-7]

New Jersey Department of Environmental Protection; Receipt of Applications for Emergency Exemptions To Use Pursuit ™; Solicitation of Public Comment

Correction

In notice document 86-3107 beginning on page 4961 in the issue of Wednesday, February 18, 1987, make the following correction:

The first three lines in the first column on page 4962 should appear at the bottom of the second column on page 4961.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Food Safety and Applied Nutrition

Correction

In rule document 87-4065 beginning on page 5950 in the issue of Friday, February 27, 1987, make the following correction:

On page 5951, in the first column, in the authority citation for Part 5, the third line should read "61-63, 141 et seq., 301-392, 467f(b), 679(b), 801 et seq.,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0416]

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

Correction

In notice document 87-24 beginning on page 360 in the issue of Monday, January 5, 1987, make the following correction:

On page 360, the Docket No. should read as it appears in the heading of this document.

BILLING CODE 1505-01-D

federal register

Friday
March 13, 1987

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; Test Procedures for Water Heater; Notice of Proposed Rule and Public Hearing

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-105]

Energy Conservation Program for Consumer Products; Test Procedures for Water Heaters

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rule and public hearing.

SUMMARY: The Department of Energy (DOE) hereby proposes to amend its test procedure for water heaters. Test procedures are one part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act as amended by the National Energy Conservation Policy Act.

DATES: Written comments (eight copies) in response to this notice must be received by May 12, 1987; the public hearing will be held on April 23, 1987 ; requests to speak at the public hearing by April 21, 1987. Copies of oral statements by noon on April 22, 1987.

ADDRESSES: Written comments, requests to speak at the public hearing, and eight copies of statements to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, Water Heater Test Procedure, Docket No. CAS-RM-79-105, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320.

The public hearing will begin at 9:30 a.m. and will be held at the following location: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Room 1E-245 (1st Floor, E Corridor), Washington, DC 20585.

Copies of the transcript of the public hearing, and the public comments received may be viewed at or obtained from the DOE Freedom of Information Reading Room; Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, 9:00 a.m. through 4:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-132, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127

U.S. Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets, Forrestal Building, Room 6B-025, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9320

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On October 1, 1977, the Department of Energy (DOE) assumed the authority of the Federal Energy Administration (FEA) for the energy conservation program for consumer products, under Section 301 of the Department of Energy Organization Act (DOE Act) (Pub. L. 95-91). The energy conservation program for consumer products was established by FEA pursuant to Title III, Part B of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163). Subsequently, EPCA was amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619). References in this notice to the Act, or to sections of the Act, refer to EPCA as amended by NECPA. Among other program elements, Section 323 of the Act requires that standard methods of testing be prescibed for covered products, including water heaters. Test procedures appear at 10 CFR Part 430, Subpart B.

The water heater test procedure was prescribed by FEA by notice issued September 27, 1977. 42 FR 54110, (October 4, 1977). These original procedures coupled laboratory tests and calculations to obtain estimates of energy efficiency and annual energy consumption for storage type electric, gas and oil water heaters. The laboratory tests consisted of a "cold start recovery efficiency test," which measured the ability of a water heater to heat cold water, and a "standby loss test," which measured the energy loss of a water heater when not providing heated water. Recovery efficiency and percent standby loss are then mathematically combined in the calculations to obtain an energy factor, DOE's overall measure of water heater efficiency. Also, the original procedures included calculations for determining the annual consumption and annual operating costs. DOE amended the water heater test procedure by notice issued October 13, 1978 (43 FR 48986, October 19, 1978) in order to correct an error in the derivation of energy factor. DOE again amended the water heater test procedures by notice issued August 30, 1979 (44 FR 52632, September 7, 1979) in order to prescribe a "measure of a water heater's useful capacity called first hour rating", where useful capacity is the maximum hourly demand which can be met by the water heater. It is emphasized here that up to this point in time, these procedures only addressed storage type electric, gas and oil water heaters. Other types of water heaters, i.e. instantaneous and heat pump type water heaters, had not entered the domestic marketplace.

By notice published in the Federal Register February 8, 1984 (49 FR 4870) (herein referred to as the 1984 proposal), DOE proposed to amend its test procedure for water heaters. DOE's objective was threefold: First, to extend coverage of the test procedure to heat pump water heaters, a relatively new water heater design not previously covered by the test procedure. Second, to add a method of testing to determine the first hour rating of water heaters equipped with thermal compensating dip tubes. Third, to make modifications to the test procedures that would yield more accurate determinations of energy efficiency and cost of operation for gas, oil and electric storage water heaters. At that time, DOE did not see a significant penetration into the marketplace by instantaneous water heaters consequently, they were not addressed in the 1984 proposal.

By notice published March 16, 1984 (49 FR 10071), DOE, on request of the water heater industry, extended the comment period 42 days and rescheduled the March 15, 1984, public hearing to April 26, 1984.

In comments received in 1984 and throughout 1985 numerous parties requested that DOE withdraw the 1984 proposal and wait until a more comprehensive proposal could be developed. Most notably, on October 2-3, 1985, DOE and the National Bureau of Standards (NBS) hosted a forum on testing and rating procedures for consumer products which was attended by manufacturers, utilities, States, and public interest groups. At the forum there was unanimous agreement that DOE should withdraw the 1984 proposal and initiate the development of a single test procedure method which would be applicable to all types of residential type water heaters (storage and non-storage). Today's notice reflects this consensus.

Today's proposal also addresses the matter of four test procedure waivers where four individual manufacturers of water heaters have received the allowance to test certain water heaters under modified test procedures. Today's proposal would extend these modifications to all manufacturers of similar designs and thereby would terminate the four individual waivers. The four waivers are: (1) A.O. Smith

Corporation for its gas water heaters equipped with thermal compensating dip tubes (47 FR 53942, November 30, 1982), (2) Bock Water Heaters Inc., for some models of water heaters with large thermal mass (50 FR 47106, November 14, 1985, modified 51 FR 21975, June 17, 1986), (3) Ford Products Inc., for some models of water heaters with large thermal mass (50 FR, 50678, December 11, 1985, modified 51 FR 18659, May 21, 1986), and (4) Lochinvar Water Heaters Inc., (51 FR 22966, June 24, 1986).

II. DISCUSSION

a. 1984 Proposal

As discussed above, the objective of the 1984 proposal was threefold: to extend coverage to include heat pump water heaters, to make modifications to existing test procedures, and to address the issue of thermal compensating dip tubes. The following discussion establishes to what extent the provisions and concepts of the 1984 proposal are retained in today's proposal.

1. Heat Pump Water Heater Test Procedure

Procedure

The most significant aspect of the 1984 proposal would have been the establishment of a test procedure for a new type of water heater called a heat pump water heater. As its name implies, a heat pump water heater utilizes a heat pump, a mechanical refrigeration unit consisting of a compressor, condenser, expansion device and an evaporator, to heat water. The heat pump extracts heat energy from its surroundings, boosts it with electromechanical energy, and delivers the total heat energy to water stored in a storage tank connected to the domestic hot water supply system of a household.

Heat pump water heaters can be classified into two categories: those with storage tanks and those without storage tanks. Heat pump water heaters with storage tanks are intended for use as sold to meet the hot water demands of a household. Heat pump water heaters without storage tanks are intended to be used in conjunction with a separate storage tank which must be supplied by the consumer. In actual usage, there will be no functional difference between these two categories of heat pump water heaters. Both consist of a heat pump unit and a storage tank, be it supplied with the heat pump unit or not.

The 1984 proposal included definitions of "heat pump water heater with storage tank" and "heat pump water heater without storage tank". The definitions would insure that any heat pump water heater that is supplied with a storage tank by the manufacturer, whether as an integral unit or an assembly, shall be tested with that particular storage tank, and that any heat pump water heater without storage tank shall be tested with a standard test storage tank. Today's proposal includes the identical definitions and provisions except that the specification for the "standard test storage tank" has changed. This change in the specification is in response to received comment and is discussed below in section II.d.8.

The method of test established in the 1984 proposal for heat pump water heaters was significantly different than that already in place for other water heaters. Specifically, DOE determined that since the energy consumption of a heat pump water heater is so dependent on the magnitude of various temperatures at various times, the existing test method of "cold start recovery" and separate standby loss test is inappropriate and a "simulated use" test method is the best means to determine the efficiency and annual operating cost of heat pump water heaters. Today's proposal maintains the "simulated use" test method for heat pump water heaters except that the test format (draw schedule) is changed from that proposed in the 1984 proposal. (The change in the test format is discussed below in section II.c.2.).

In addition, the 1984 proposal established national average operating conditions for heat pump water heaters. These conditions, which are used as the basis for calculating the energy consumption, include the following: inlet water temperature, stored water temperature, room ambient air temperature, and daily water usage. It was DOE's intent to be as consistent as possible with the existing provisions for gas, oil and electric water heaters and still provide a fair basis of comparison for heat pump water heaters. Consequently, the 1984 proposal established that the existing provisions of inlet water temperature (55 °F), stored water temperature (145 °F), and daily usage (64.3 gallons per day) would be applicable to heat pump water heaters. A room ambient air temperature of 65 °F for heat pump water heaters versus 55 °F for all other water heaters, would be the only difference between the operating conditions of the two types of water heaters in the 1984 proposal. Today's proposal extends this policy of consistency even further than the 1984 proposal. Specifically, the operating conditions in today's proposal are identical for all types of water heaters. The development of each of these uniform conditions is discussed below.

Also included in today's proposal are the 1984 proposal's testing and rating provisions regarding heat pump water heaters without a storage tank. Specifically, the 1984 proposal required this category of heat pump water heater to be connected to a representative storage tank when conducting the laboratory tests. The representative storage tank was specified as a typically sized electric water heater with a typical standby loss. The 1984 proposal maintained that instances of heat pump water heaters without a storage tank being connected to other than electric storage type water heater is very unlikely and that the range of performance differences of various electric storage type water heaters is so small as to justify the single test with a representative electric water heater. Only a slight difference in the specification of this standard storage type water heater resulted from the received comments. (*See* section II d.8 of today's notice).

2. 1984 Proposed Changes to Existing Test Procedures for Storage Type Water Heaters

In order to avoid the burdens of retesting, the 1984 proposal did not include any significant changes to the provisions already in place for storage type electric, gas and oil water heaters. Thus, the 1984 proposal essentially maintained the existing procedures except that some changes involving the first hour rating test and heat traps provisions were included.

Two changes were proposed in 1984 regarding the first hour rating test: (1) The water draw rate for the first hour rating water draw test was changed from 5.0 gallons per minute, which represents severe conditions of household usage, to 3.0 gallons per minute, which represents a more typical demand flow rate, and (2) The temperature adjustment ratio, a factor in the calculation for first hour rating, was slightly modified to correct an error in the existing calculations for first hour rating.

Today's proposal would provide for a first hour rating test for all types of water heaters including non-storage type water heaters. With this larger perspective DOE now does not see the need to change 5 gallon per minute flow rate specification in the first hour rating test as was proposed in 1984 for storage type water heaters. DOE believes that the first hour rating should be based on severe conditions of household usage (5 gallons per minute) rather than the typical demand (3 gallons per minute). A large factor contributing to DOE's

current position on this matter is today's proposal regarding instantaneous water heaters, where the first hour rating is determined by adjusting the actual flow rate to a flow rate of 5 gallons per minute (*See* section II.c.1 below). The purpose of this adjustment is to normalize the utility of an instantaneous water heater, which may have a limited ability to deliver hot water at a high flow rate, to the utility of a storage water heater which can deliver some amount of hot water at any flow rate.

Logically, DOE believes the adjustment to determine first hour rating for instantaneous water heaters and the draw rate of the first hour rating test for storage type water heaters should be the same, and further, this rate should be reflective of severe conditions of household use. Accordingly, today's proposal maintains the existing test procedures 5 gallon per minute flow rate in the first hour rating draw test instead of the 3 gallon per minute flow rate proposed in the 1984 proposal.

DOE received no adverse comment regarding the 1984 proposal to correct the temperature ratio adjustment factor in the first hour rating equations for storage type water heaters, and therefore, is including in today's proposal the correction for temperature ratio adjustment factor. Accordingly, where the existing test procedure incorrectly adjusts for the energy content of withdrawn water by using the ratio of the mean draw temperature over the initial outlet temperature, today's proposal would adjust the withdrawn water by using the ratio of the mean temperature difference between the withdrawn water and the surrounding air over the initial temperature *difference* between the heated water and the surrounding air.

The 1984 proposal also eliminated the heat trap energy saving credits found in the existing test procedure. This was done because the installation instructions included in the 1984 proposal clarified the test set-up provisions such that the fixed credits were no longer needed. Specifically, the 1984 proposal would have allowed testing with heat traps only if the heat traps are an integral part of the water heater and such testing would be reflective of the energy savings contribution of heat traps. Today's proposal continues this concept; however, some additional changes are proposed for the installation provisions as a result of received comments (*See* section II.d.16).

3. Waivers

Finally, the 1984 proposal addressed the matter of a test procedure waiver granted to A.O. Smith Corporation (A.O. Smith). 47 FR 53942, (November 30, 1982). A.O. Smith received allowance to conduct the first hour rating test at lower tank temperature (145 °F) than the elevated temperature (160 °F) of the existing test procedures when testing its water heaters equipped with thermal compensating dip tubes. The 1984 proposal would have defined the term "thermal compensating dip tube" and would have allowed the provisions granted A.O. Smith to all manufactures which test water heaters equipped with thermal compensating dip tubes. Today's proposal eliminates all testing provisions requiring elevated temperatures, and thus there is no need in today's proposal to address the issue of thermal compensating dip tubes. However, since today's proposal would solve the testing problems associated with thermal compensating dip tubes, the resulting final rule would terminate the A.O. Smith waiver.

b. A Single Test Method for All Designs of Water Heaters

An important aspect of the 1984 proposal was DOE's position that a new and different test method (i.e. simulated use test method) was required for heat pump water heaters. Further, the 1984 proposal held that in consideration of the burden of retesting, requiring this new test method for all types of water heaters was not justified. Consequently, the 1984 proposal maintained the existing "cold-start recovery/separate standby loss" test method for non-heat pump water heaters. Substantial comment was received regarding this position. *See* II.b.1 below. DOE believed it inappropriate to make a decision on this issue until further comment was received. Subsequently, DOE sought to develop a consensus position regarding this issue. Specifically, by means of a public forum hosted by DOE and the National Bureau of Standards (NBS), DOE was given a clear expression of need from the water heater industry. Basically the forum attendees recommended that DOE should initiate the development of a single test procedure, a simulated use test method, which would be applicable to all types of residential type water heaters, and that the burden of retesting is justified. DOE agrees with this position and accordingly is proposing a uniform test procedure that addresses all types of water heaters and is withdrawing the 1984 proposal.

1. 1984 Proposal Discussion of Comments Regarding Test Method/ Methods

Six commenters indicated in various ways that all water heaters should be tested using the same test method, regardless of the energy source or type of water heater.

DEC International Inc. (DEC International), a manufacturer of heat pump water heaters, asserted that if the existing DOE test procedure for water heaters is inappropriate for testing heat pump water heaters because it does not simulate usage, then it must be inappropriate for testing gas and oil water heaters for the same reason. DEC International agrees that heat pump water heater performance will be different under a cold start test versus a simulated use test and that even the size of the water draw of the simulated use test would affect the efficiency of heat pump water heaters; but, DEC International contends that the same is true of gas and oil water heaters. DEC International claims that the statement made by DOE in its 1984 proposal notice that the efficiencies of gas, oil and electric storage water heaters are nearly the same regardless of the temperature of the water being heated is "certainly not sufficient" to justify the DOE proposal. (DEC International, No. 1, at 1.)[1]

A.O. Smith, a water heater manufacturing firm, expressed the concern that the use of different procedures for testing heat pump water heaters versus other types of water heaters would seem to be contrary to one of the labeling program's objectives, i.e., that the consumer would be able to make legitimate comparisons between options. With inconsistent test approaches, it would seem that the consumer could be misled when comparing heat pump water heaters with other water heaters. A.O. Smith further questioned whether DOE had data to show that results of testing storage water heaters with the simulated use test provides comparable data to the current water heater test procedure. Without such data, A.O. Smith believes it would be ill-advised to

[1] Comments on the rulemaking were given docket numbers. For comments submitted in writing, citations provide the name of the organization, firm or person who made the comment, the docket number assigned to the comment, and the page on which the comment is found in the commenter's submittal. For comments made in oral presentations at public hearings, citations provide the name of the organization, firm or person represented by the person making the presentation, the date of the public hearing, and the page number of the official transcript of the public hearing where the comment is found.

adopt the 1984 proposed rule. (A.O. Smith, No. 2, at 1.)

Mr. W.H. Stephenson stated that all water heaters should be tested in exactly the same manner no matter what their energy source may be because it is extremely important to have test procedures that are a common standard in the industry. (Stephenson, No. 11, at 1.)

The Natural Resources Defense Council, Inc. (NRDC), a non-profit environmental organization, stated that heat pump water heaters differ from other electric water heaters only in their greater efficiency; they have no distinguishing differences in performance, utility, or convenience features. However, NRDC agrees with DOE's reasoning concerning the inappropriateness of a cold start test for recovery efficiency for heat pump water heaters since actual water heater recovery operation in the field will occur over a small range of water temperatures ending with the thermostatically controlled temperature setting of the water heater. NRDC stated that DOE properly notes that for testing convenience, the cold start procedure is a good approximation for non-heat pump water heaters, but that heat pumps must use a more realistic water draw procedure for measuring recovery efficiency. The 1984 proposed procedure, in which one-third of the daily water use is withdrawn at a time, seemed reasonable to NRDC. Finally, NRDC commented that given the philosophy DOE has pursued elsewhere in its rule, it would be more logical to specify the simulated use test procedure for all types of water heaters. (NRDC, No. 13, at 1 and 4.)

Amtrol, Inc. (Amtrol), a manufacturer of heat pump water heaters, stated that the DOE test approach for measuring the recovery efficiency and standby loss of all water heaters should be the same; otherwise, the consumer will not have a common base upon which to compare different types of water heaters. (Amtrol, No. 14, at 1.)

The Gas Appliance Manufacturers Association (GAMA) stated that the primary value of a water heater efficiency test method is to allow for relative comparisons of various models and various types of water heaters, and that it is of paramount importance that all water heaters be tested, and as much as practically possible, on the same basis. That is, all water heaters should be tested using similar test methods and under similar installation and usage conditions. GAMA contends that a test method which only allows for the comparison of models of the same type of water heater, but does not allow for the comparison of models of different types of water heaters using different fuels, is inappropriate and is inferior to a test procedure which tests water heaters on a common basis. (GAMA, No. 19, at 3; and April 26, 1984, at 12.)

DOE believes the commenters have made a good case for using the same test approach for all types of water heaters. Their arguments are logical on the basis that the output of all water heaters is the same, namely, hot water. Therefore, DOE is today proposing to amend the water heater test procedures to require all water heaters to be tested using the same test approach.

2. Justification of "Simulated Use" Test Method for All Water Heaters

Today's proposal would prescribe the "simulated use" test method for all designs of water heaters, for the following reasons:

(1) Heat pump water heaters cannot be evaluated fairly under the existing test method and as a consequence a different test method is needed for at least this design of water heater.

(2) A "simulated use" test method has been shown to be appropriate for heat pump water heaters and any other type of water heaters including storage water heaters.

(3) Instantaneous water heaters operate only when a draw of water is made and thus "simulated use" test method is the logical test method for this type of water heater.

(4) All interested parties known to DOE, including the water heater manufacturers, desire a consistent test method across all designs of water heaters regardless of retesting burden.

Therefore, in consideration of all of the above, today's proposal would include the "simulated use" test method for all water heaters.

c. Additional Issues and Concepts of Today's Proposal

1. Instantaneous Water Heaters

Today's proposal includes testing and rating procedures for a type of water heater which has not been addressed in previous DOE test procedure rulemakings, namely "instantaneous" type water heaters. These types of water heaters differ from storage type water heaters in that they heat water on demand as opposed to storage type water heaters which heat and store water in anticipation of demand. These designs have recently appeared in the marketplace and are most distinguishable from storage type water heaters by their lack of an appreciable stored volume of heated water. Consequently, today's rule would define an instantaneous water heater as a residential water heater with less than 20 gallons of storage capacity, where 20 gallons is the lower limit of storage water heaters already covered in the test procedures.

Since the "simulated use" test method is well suited for the testing of all types of water heaters, extending the coverage of DOE test procedures to include instantaneous type water heaters is a relatively straightforward matter. In fact, most of the provisions and calculations apply to all types of water heaters, and as a consequence, separate provisions and calculations are not generally needed for instantaneous water heaters.

One exception to this uniformity involves the calculation of first hour rating, the test procedure measure that describes the useful capacity of a water heater. For storage type heaters, today's notice continues the provisions of the existing test procedures where the useful capacity is determined by actual testing including drawing water from the tank, whereas, for instantaneous water heaters, which have no tank, today's notice provides a method of estimating an equivalent first hour rating by adjusting the volume of 135 °F water which an instantaneous heater can deliver in a one hour period. The adjustment relates the flow rate of an instantaneous water heater to a flow rate of 300 gallons per hour. The purpose of the adjustment is to equalize the basis of capacity comparisons between instantaneous and storage type heaters. In other words, since a storage type water heater can deliver some amount of hot water at any flow rate, DOE believes the hourly capacity (first hour rating) of an instantaneous water heater should be adjusted relative to the rate at which the instantaneous water heater can deliver this water. DOE chose the 300 gallons per hour rate as representative of the upper limit of flow rates that may be desired in a household (e.g., 300 gallons per hour is typical of hot water fill demands of clothes washers and dishwashers).

An example of the procedure to determine the first hour rating of an instantaneous water heater would be as follows: (1) The heater is tested and determined to have a recovery rate of 2 gallons per minute (120 gallons per hour), where recovery rate is the flow rate at which the heater can provide 135 °F water. (2) The first hour rating is then determined by multiplying the recovery rate (120 gal/hr) times the ratio of the recovery rate (120 gal/hr) over 300, the resulting product being 48 gallons. The implication of this adjustment is that

DOE believes an instantaneous water heater which can deliver hot water at a rate of 2 gallons per minute is roughly equivalent in utility to a storage water heater with a first hour rating of 48 gallons. In this example the adjustment is downward because the instantaneous water heater of this flow rate cannot provide hot water at a flow rate that might be expected at sometime during typical household usage.

In summary, DOE believes today's proposal would provide for fair and accurate representations of the efficiency and energy consumption of instantaneous type water heaters. NBS has tested a number of instantaneous type water heaters using the "simulated use" test method of today's proposal, and has not reported any technical difficulties. DOE is interested in receiving comments on these procedures, particularly comments that report testing experience in using today's proposed procedures.

2. Format of Simulated Use Test (Draw Schedule)

The 1984 proposal introduced the "simulated use" test method for the first time in DOE water heater test procedure matters. As the name implies this test method attempts to simulate in the laboratory the conditions of operation which a water heater is likely to experience in a home. Ideally, this laboratory test should simulate the operation of a water heater through a typical 24-hour period, by including, a large number of water draws of differing quantities of water, occurring at various times throughout a 24-hour period. The test format, sometimes referred to as draw schedule, could be developed from field reports which reflect the monitoring of residential water heater installations. Such draw schedules have been developed and compared to less complicated draw schedules to determine the effect of draw schedule on energy efficiency measures. NBS found that the energy efficiency of heat pump water heaters is relatively insensitive to the hot water draw schedule employed in a simulated use test, so long as the same total volume of hot water was withdrawn over the same period of time. Consequently, the 1984 proposal specified a simulated use test for heat pump water heaters which was 24 hours in duration beginning with three equal water draws conducted in succession and ending with a standby loss test for the remainder of the 24-hour period. An advantage of this proposed format is that the testing could be started and all of the water draws completed within a standard 8-hour workday and the unit could be left to operate unattended for the remaining portion of the test. This represents a reduced testing burden when compared to a draw schedule which requires water draws throughout a 24-hour period.

Since the time of the 1984 proposal, DOE has directed NBS to investigate the effect of test format including draw schedule on the measured efficiency of all types of water heaters. The results of these efforts showed that, as with heat pump type water heaters, the energy efficiency is relatively insensitive to the test format and the hot water draw schedule. As a consequence, today's proposal does not expand the test procedures to model a 24-hour period but rather the general format of the 1984 proposal for heat pump water heaters is proposed for all water heaters. That is, a draw period, which can be conducted in a 8-hour workday, is followed by a standby loss test for the remainder of a 24-hour test period. However, since the NBS work did not include all the possible designs of water heaters available today and could not include future designs of water heaters, DOE believes it prudent to propose a draw test which is as reflective of household usage as possible and still can be conducted in an 8-hour workday. Therefore, today's proposal includes in the draw portion of the simulated use test a draw schedule which would require six equal draws of water. DOE believes this draw schedule is more reflective of household usage than the three equal draws of the 1984 proposal for heat pump water heaters because the six equal draws are more representative of water draw volumes that occur during typical daily usage.

DOE is interested in comments relating to test format and draw schedule, particularly comments that include test data.

3. Assigned Usage Rates

Today's proposal includes a new concept of assigned usage rates for different sized water heaters. This concept is discussed below in conjunction with the comments on the 1984 proposal concerning usage rates (*See* section II.d.3).

4. Effective Date

In consideration of the retesting that would be required by today's proposal and in consideration of conflicting ratings, DOE is proposing that use of the current and new test procedure be allowed from the publication date of the final rule and to continue for a period of six months, at which time only the new test procedure can be used.

5. Test Procedure Waivers Since the 1984 Proposal

Since the time of the 1984 proposal, three manufacturers of water heaters filed petitions for and were granted test procedure waivers with regard to their models of water heaters with high thermal mass. (**Federal Register** citations are included in the Background section of this notice).

These waivers allow the manufacturers to test their high thermal mass models using the simulated use test method. Since today's proposal would allow testing of all types of water heaters using the simulated use method, today's proposal would constitute the termination of all three waivers. This action is in accordance with the expiration provision in each test procedure waiver granted by DOE.

6. "Off Peak" Storage Type Electric Water Heaters

Several electric utility industry representatives have asked DOE to consider the inclusion of "off peak" storage type electric water heaters into the DOE test procedures. These water heaters, sometimes referred to as "controlled" water heaters, incorporate a control mechanism which deactivates the energy supply for some predetermined period each day. These heaters are of two types, those under direct control by electric utilities and those not under direct control. Direct control is achieved by communicating the control of the consumer's water heater to the electric utility. The communication is done by the use of radio transmission or direct wiring. Nondirect controlled water heaters would include a device at the water heater, which would implement the deactivation of the energy supply.

The primary benefit of "off peak" storage type water heaters is their positive effect on a given utility's peak load management. As a consequence, many utilities offer a financial incentive to consumers who have "off peak" storage water heaters.

A second benefit of controlled water heaters is that they consume less energy than identical water heaters without these controls. Specifically, if a deactivation period of significant length is imposed on the daily cycle of a water heater, the standby loss, a component of DOE energy factor, is reduced. With this increase in energy efficiency, a corresponding reduction in energy consumption results. Since the existing and proposed test procedures model the daily energy consumption of a water heater without such controls,

improvement in energy performance for controlled water heaters would not be reflected in the test results. The electric utility industry realizes that improvements in energy efficiency do not describe completely the benefits of this technology; however, industry believes recognition in the DOE efficiency test procedures would greatly improve the available information regarding this technology.

DOE has formulated a procedure which provides for alternative energy factors and energy consumptions calculated from laboratory tests where the tests include the deactivation periods. These separately determined measures of energy consumption, Controlled Energy Factor (CEF) or Controlled Energy Consumption (CEC) could be delineated under § 430.22(e)(3).

DOE believes it is appropriate to restrict the use of this alternate procedure only to those electric water heaters that are best suited for this type of control, i.e., electric water heaters with high storage volumes and low standby losses.

DOE requests comments on whether these alternate measures of energy use under § 430.22(e)(3) should be added for water heaters operating as "off peak" water heaters. Specifically, DOE is interested in receiving comments regarding the desirability of incorporating these measures into the test procedures and including any restrictions.

d. Comments on The 1984 Proposal

1. Repeatability and Reproducibility of Simulated Use Test Method

As mentioned above, today's proposal not only would require the simulated use test method for heat pump water heaters as proposed in 1984, but also would require the simulated use method for all types of water heaters. DOE maintains that the repeatability and reproducibility of today's proposed simulated use test is sufficient for the purposes of the program.

In commenting on the 1984 proposal, GAMA stated that any efficiency test procedure cannot accurately estimate the actual energy consumption, or cost of operation, for all the varying installation and usage conditions which occur. GAMA concludes that the primary value of an efficiency test procedure is to provide a reasonable comparative estimate of a product's efficiency and/or cost of operation under prescribed installation and usage conditions. GAMA states that to maximize the value of a comparative estimate of efficiency, a test procedure must have a high degree of repeatability and reproducibility. Further, in order to insure the validity of comparisons of estimated efficiencies, the inherent variances in any test procedure must be minimized so that differences in efficiencies will be reflective of differences in the design of the models being compared, and not due to test tolerances. GAMA contends that in developing any test procedure there is a need for compromise between scientific accuracy and repeatability and the desire to provide a measure of efficiency which will be reflective of the efficiency achieved in actual usage. GAMA stated that since the primary value of an efficiency test procedure is the establishment of a relative scale for comparing models, the need to simulate field usage installation conditions should be subjugated to the need for scientific accuracy and repeatability. Having established this philosophy for developing test procedures, GAMA went on to cite deficiencies in the procedures and results of tests conducted at NBS and which DOE used as a basis for identifying the simulated use test methodology as best for heat pump water heaters. GAMA cited lack of control of ambient conditions, specifically room temperature and relative humidity, as a major shortcoming of the tests conducted. GAMA also cited the standard deviation in the test results as being excessive (6 percent of the average value of energy factor for unit "A" and 9 percent of the average value for unit "B"). GAMA cited the low repeatability exhibited by these test results as reason to question seriously the viability of the simulated use test approach. (GAMA, No. 19, at 2, 10, 11, 12 and 13).

In response to GAMA's comments, DOE directed NBS to perform additional tests on the heat pump water heaters under controlled ambient conditions to evaluate the repeatability of the simulated use test methodology. (This test program also was instituted to address comments that the relative humidity specification in the 1984 proposal for the simulated use test permitted too broad a tolerance, contributing to test variability). The results of this test program support the need for tighter controls on ambient conditions, specifically relative humidity, for testing heat pump water heaters by the simulated use test. With such tighter controls, the repeatability of the test results for the simulated use test is high. To compare, the standard deviation for test unit "A" was 2.1 percent of the average value of energy factor (five tests conducted) and was 0.7 percent of the average value of energy factor for test unit "B" (three tests conducted).

As a consequence of this cooperative test program, DOE is proposing in today's notice tighter control of humidity when testing heat pump water heaters. However, in consideration of testing burden and because little effect was found, today's proposal would not require tighter controls on ambient testing conditions for other designs of water heaters.

2. Thermostat Temperature Setting and Stored Water Temperature for Storage Type Water Heaters

Today's proposal would establish that all storage type water heaters be tested at a thermostat temperature setting of 135 °F ± 5 °F and that for the purpose of calculating energy factor and energy consumption the stored water temperature is to be as measured in the test.

In response to the 1984 proposal only one comment was received (California Energy Commission, No. 8, at 1) which supported DOE's proposal that all water heaters be tested at a thermostat setting of 145 °F. Thirteen commenters disagreed with the use of an actual or simulated thermostat setting of 145 °F for testing heat pump water heaters and/or for testing of gas, oil and electric storage water heaters.

DEC International stated that many manufacturers of heat pump water heaters produce units with maximum thermostat settings of 145 °F. DEC recommends a thermostat setting of 135 °F for testing heat pump water heaters. (DEC International, No. 1, at 2).

Central Power and Light Company (Central Power and Light), a utility company serving the southern area of Texas, commented that a 145 °F thermostat setting is far from reality in its service area. Central Power and Light has encouraged its customers to use a 120 °F thermostat setting for years. Central Power and Light contends that testing heat pump water heaters at a thermostat setting of 145 °F would be grossly inaccurate and misleading. (Central Power and Light, No. 5, at 2.)

South Carolina Electric and Gas Company (SC Electric and Gas), citing active participation in evaluating heat pump water heaters, recommended that they be tested at a thermostat setting of 130 °F for energy savings, product life, and thermostat design reasons. (SC Electric and Gas, No. 6, at 1.)

Borg-Warner Central Environmental Systems, Inc. (Borg-Warner), a manufacturer of heat pump water heaters, suggested that unless specified differently by the manufacturer, the

thermostat setting for testing heat pump water heaters should be 140 °F±3 °F. (Borg-Warner, No. 7, at 1.)

Mr. Robert E. Cook, a retired Director of Engineering of a major water heater manufacturer speaking on his own behalf, commented that the great majority of newly manufactured residential electric water heaters leave the factory with their thermostats preset at a temperature setting of between 135 °F and 140 °F. He also commented that the "normal" indicator on the temperature control knob of gas water heater thermostats will reflect a 140 °F water temperature setting. (Cook, No. 9, at 2.)

Florida Power Corporation (Florida Power), an electric utility company, commented that the requirement of a thermostat setting of 145 °F for heat pump water heaters represents an unnecessary tax on the efficiency and reliability of compressors used in this application. Florida Power recommended that the outlet water temperature for heat pump water heaters be 120 °F since this is the temperature at which most hot water is used in homes. Florida Power also recommended that other types of water heaters be tested to simulate a field thermostat setting of 120 °F since this would be representative of hot water temperatures presently used, recommended, and sometimes legally required. (Florida Power, No. 12, at 2 and 3.)

NRDC recommended that the water storage temperature be revised downward to 135 °F since temperature setback of thermostats has been recommended as a conservation measure since at least the mid-1970's. NRDC remarked that utilities recommend that the temperature be set no higher than 140 °F and only then if the homeowner has a dishwasher. For households without a dishwasher, recommended thermostat settings are 120 °F. A further reason for a 135 °F setting, according to NRDC, is that the efficiency of heat pump water heaters declines as the temperature of the stored water increases from 130 °F to 150 °F. NRDC contends that the higher (145 °F) temperature in the test procedure will encourage manufacturers to improve the performance of their products at maintaining the higher water temperatures, which is likely to be an inefficient use of their resources. Finally, NRDC stated that if data on water temperature were to be collected from surveys, it would more likely support NRDC's recommended test temperature of 135 °F than the proposed test temperature of 145 °F. (NRDC, No. 13, at 4.)

Amtrol recommended that a thermostat setting of 135 °F be established for all water heaters due to the trend of lowering thermostat settings to prevent scalding. (Amtrol, No. 14, at 1.)

E-Tech, a heat pump water heater manufacturer, suggested that the final mean tank temperature should be 135 °F±3 °F. It was stated that the unnecessarily high value of 145 °F is beyond the performance capability of most of the current models of heat pump water heaters and is above the 140 °F maximum temperature recommended by both water heater manufacturers and most government agencies. If the test procedure requires testing at 145 °F, E-Tech predicts that manufacturers will design heat pump water heaters to achieve the highest efficiency rating when heating to 145 °F. When these units are then placed in the field and operated at 135 °F, E-Tech said they will be operating off of their design point, resulting in a very significant loss in energy savings on a national basis. (E-Tech, No. 15, at 2.)

Edison Electric Institute (EEI) commented that a 145 °F thermostat setting specification is inappropriate since the vast majority of homes use hot water at less than 140 °F and many use hot water below 120 °F. The proposed thermostat setting specification of 145 °F for heat pump water heaters would also represent an unnecessary burden on the efficiency and reliability of the units' compressors. EEI further stated that additional field data are required to verify the assumptions used by DOE in the test procedure since the data DOE used is statistically inadequate to provide a reliable assumption. EEI stated that the electric utility industry has for more than 10 years distributed massive amounts of informal literature and contacted millions of customers explaining the benefits of and the procedure for reducing water heater thermostat settings to 120 °F. Surveys in post-Residential Conservation Service (RCS) audits in Oklahoma and Wisconsin revealed that 70–80 percent of the customers had water temperatures below 140 °F. Finally, EEI stated that in some States—such as California and Florida—145 °F is beyond the range of normal water heater temperature settings and should be reduced to a temperature representative of hot water temperatures presently used, and suggested a thermostat setting of 120 °F. (EEI, No. 18, at 2 and 3.)

Southern California Edison Company (Southern California Edison), an electric utility company, indicated its concern that the temperature setting used may not be representative of typical operational practices. Southern California Edison remarked that over the last several years it has recommended that consumers set their heat pump water heater thermostats at 120 °F or 140 °F, depending on whether a dishwasher is present, rather than at the 145 °F setting of the proposed test procedure. In addition, Southern California Edison claimed that most manufacturers of heat pump water heaters with storage tanks recommend a setting of 140 °F only if a dishwasher is present. Southern California Edison is concerned that the use of a 145 °F temperature setting for test purposes will yield results that are not representative of consumer usage. Southern California Edison recommended that the test temperature setting be lowered from 145 °F to 140 °F. (Southern California Edison, No. 20, at 1.)

Sears, Roebuck and Company (Sears) believes the proposed 145 °F thermostat setting for heat pump water heaters is too high. Sears commented that many heat pump water heaters manufactured today cannot attain water temperatures that high. Sears observed that both the proposed Air Conditioning and Refrigeration Institute Standard and Gas Appliance Manufacturers Association Standard for testing heat pump water heaters specify 135 °F as the temperature setting for test purposes. Sears recommended that 135 °F be adopted by DOE as the temperature setting for testing heat pump water heaters because it is more indicative of actual consumer usage. (Sears, No. 21, at 1.)

At the public hearing on the 1984 proposal and in written comments, GAMA commented that the present safety standards for gas residential storage type water heaters specify that the water heater leaves the factory with the thermostat set at its lowest setting and also includes instructions to the homeowner to set the thermostat at a setting consistent with a water temperature of 130 °F. The safety standard for electric residential storage type water heaters specifies that the water heater be factory set at a thermostat setting of 140 °F. In view of this trend towards lower water heater thermostat settings, GAMA requested that consideration be given to revising the test procedure to specify a thermostat setting of 135 °F. (GAMA, April 26, 1984, at 13 and 14; and No. 19, at 14.)

With regard to heat pump water heaters, commenters provided convincing arguments that consumers use a lower thermostat setting than 145 °F. A number of considerations raised by commenters point to this, including: consumer response to the advice of utility companies and public service organizations to reduce water heater thermostat settings to save energy and reduce the hazard of scalding; characteristics of current heat pump water heater designs which are optimized for operation at thermostat settings below 145 °F; and industry standards pertaining to water heater temperature controls which are likely to lead to lower thermostat settings in actual usage

DOE also considered that, with the purchase price of heat pump water heaters running at two to three times that of a conventional storage water heater, consumers who purchase heat pump water heaters do so in recognition of their energy savings potential. DOE considers it reasonable that such consumers are likely to operate them in accordance with the manufacturer's recommendations in order to realize these potential energy savings. Since it appears that all heat pump water heater manufacturers advise that their units be operated at thermostat settings below 145 °F, DOE expects most heat pump water heater users will abide by this advice.

For these reasons, DOE accepts the thermostat setting specification of 135 °F recommended by the majority of commenters for testing heat pump water heaters. Today's proposal would require that heat pump water heaters be tested at a thermostat setting of 135 °F±5 °F and today's calculations would assume a thermostat setting of 135 °F.

In addition, DOE and NBS have studied thermostat setting for all types of storage water heaters since the time of the 1984 proposal. Specifically, in a report entitled "A Review of Energy Use Factors for Selected Household Appliance", NBSIR 85–3220, August 1985, NBS concluded that a 135 °F thermostat set-point would be a more appropriate assumption for all types of water heaters currently produced. DOE agrees and is defining, in today's proposal, that for calculation purposes, 135 °F is the assumed thermostat set-point for all storage type water heaters.

Further in the interest of consistency, today's proposal specifies that all storage type water heaters be tested at a thermostat setting of 135 °F±5 °F. This represents a change from the existing provisions for non-heat pump storage water heaters which specify an elevated thermostat setting of 160 °F when conducting tests. This setting was required to maintain a specified temperature difference during the test without possibly requiring cooling of the supply water. Because of the change in the supply water specification, discussed below, and because of the increase in testing sophistication demonstrated by those testing water heaters, DOE does not now preceive a need to maintain the elevated thermostat setting provisions. Consequently, today's proposal would require 135 °F±5 °F tank temperatures to be maintained in the actual laboratory testing of all storage type water heaters.

3. Daily Hot Water Usage

Today's proposal would establish four daily hot water usage rates in the procedures. Depending on the capacity, a given water heater model would be assigned one of the four rates for the purposes of efficiency testing and energy consumption calculations. The four rates are 20, 40, 60, 80 gallons per day where the large majority of water heater models would be assigned the new national average of 60 gallons per day.

In response to the 1984 proposal three comments were received on the established average daily hot water usage of 64.3 gallons per day.

DEC International indicated it believes that 75 gallons per day is a more realistic value because of increased use of automatic clothes washers and automatic dishwashers. (DEC International, No. 1, at 1.)

Florida Power indicated that the 64.3 gallons per day of hot water usage is far in excess of that determined for apartment households in a nationwide test metering project jointly conducted by ASHRAE and EEI. Statistical sampling of energy use by water heaters in the Florida Power service area shows that less than 5% of water heaters would use the energy projected by the temperatures and volume of water used in the DOE test. Florida Power resubmitted data obtained from separately metered electric water heaters which had previously been submitted under DOE's first rulemaking in 1977 to adopt a test procedure for water heaters. (Florida Power, No. 12, at 2.)

NRDC commented that the use of 64.3 gallons of hot water per day per household is inappropriate because it is based on the water consumption of a family of four, whereas actual household size has declined to less than three. NRDC contends that there are no objective data supporting the use of a family of four as the basis for this test procedure: It is neither average, typical, nor representative. In 1980, for example, families of four were less prevalent than families of either one, two, or three, and the average household size was 2.75. Average household size has been declining steadily and has not been as high as four since the early 1930's. Thus, NRDC contends, it is likely to decline further by the time this test procedure is effective. Projected household size for 1985 should therefore be the basis for hot water use in the test procedure. NRDC included, as an appendix to its written comment, a detailed analysis of daily hot water consumption which NRDC says clearly shows that current hot water usage is on the order of 25–40 gallons per day. NRDC also cited deficiencies in the data from which DOE originally obtained the 64.3 gallons per day estimate. (NRDC, No. 13, at 3 and 7.)

DOE and NBS have studied daily hot water usage since the time of the 1984 proposal and comment period. Specifically, in a report entitled "A Review of Energy Use Factors for Selected Household Appliances," NBSIR 85–3220, August 1985, NBS evaluated various studies available on the issue. NBS concluded that "in weighing all of the studies together, . . . the 64.3 gallons per day factor for a national hot water usage may be an upper limit and a lower value may be more representative."

During the process of studying this issue, DOE and NBS have developed a test procedure improvement that does not require determining a single average daily usage. The improvement is based on the proposition that different "sizes" of water heaters will be exposed to proportionally different usages (e.g. larger water heaters will see a larger daily usage). Stated simply, today's proposal would require testing and calculation of results based on a daily usage rate most appropriate for that particular water heater.

The single daily usage rate of the existing test procedure has merit in that it normalizes the energy consumption comparisons to a common basis. In other words, all water heaters are evaluated on the basis that they will provide the same useful output of service, i.e., 64.3 gallons of hot water per day. DOE believes this commonality of basis of comparison should be maintained to the extent possible in all consumer product test procedures. However, for water heaters some problems have resulted from this policy. In particular water heaters which differ significantly from the typical residential size are evaluated on a usage which is not likely to be seen by these water

heaters, e.g. a 20 gallon electric water heater is not likely to be exposed to a 64.3 gallon daily usage. As a consequence, energy efficiency information for extremely small and extremely large residential water heaters is somewhat misleading under the existing test procedure.

DOE believes this problem can be resolved and still maintain a reasonably uniform basis of comparison, if a few discrete usage rates are incorporated into the test procedures. That is: 20, 40, 60, or 80 gallons per day usage is assigned to a particular water heater model depending on that water heater's likely application.

DOE believes that first hour rating is the best characteristic of a water heater on which to base an assigned usage rate. Consequently, today's proposal assigns a daily usage (U) for various ranges of first hour rating. This assigned U would be used throughout the test procedure, including the total amount of water drawn during the simulated use test.

DOE believes oil water heaters should be excepted from this assigned usage plan because oil water heaters by design have inherently high first hour ratings but are not typically exposed to daily usages proportional to their first hour ratings. Also, there does not appear to be a large range of first hour ratings available for oil water heaters. Consequently, today's proposal assigns a single usage rate of 60 gallons per day to all oil water heaters regardless of the first hour rating.

4. Supply Water Temperature

Today's proposal would establish 58 °F as the national average inlet water temperature and would require testing with 58 °F±2 °F supply water temperature for all types of water heaters.

In response to the 1984 proposal, three commenters commented on the appropriateness of the supply water temperature of 55 °F. All three commenters believe that the supply water temperature should be higher.

Central Power & Light (serving about 490,000 residential customers in a 44,000 square mile area in the lower one-third of Texas) provided data concerning water main temperatures in its service area. The data, monthly temperature readings for each of 7 cities over a one year period, range from a low of 55.2 °F (February) to a high of 86.8 °F (July). (Central Power and Light, No. 5, at 1.)

Florida Power commented that the assumed average inlet water temperature of 55 °F does not take into consideration that inlet water temperatures in populated areas are typically 10–15 °F higher than ground water temperatures due to the interchange of heat between underground piping and heat exchange in the building environment. Another factor justifying the use of a higher average incoming water temperature cited by Florida Power is that most new construction is occurring in the so-called sunbelt area of the country where ground water temperatures are higher than in other areas of the country. Florida Power recommends that the water supply temperature for testing all water heaters should be 70 °F. (Florida Power, No. 12, at 1 and 3.)

EEI stated that a water heater inlet (supply) temperature of 65–70 °F would be more realistic and cited the same rationale as Florida Power. In addition, EEI included data on average monthly tap water temperatures for the Washington, (D.C.) Suburban Sanitary Commission areas, as well as a copy of the water main temperature data supplied by Central Power and Light. EEI recommended the inlet water temperature for the test be increased to 65–70 °F. (LEI, No. 18, at 4.)

DOE and NBS have examined the matter of average inlet water temperature since the time of the 1984 proposal and comment period. Specifically, in a report entitled "A Review of Energy Use Factors for Selected Household Appliances," NBSIR 85–3220, August 1985, NBS expanded the basis of a national average water inlet temperature by conducting a population—weighted analysis. Using a U.S. Geological Survey map, a single representative water heater inlet temperature was estimated for each State. Each State's temperature was then weighted by that State's estimated number of water heaters in order to compute a national average. On this basis NBS recommends an average inlet temperature of 58 °F. DOE agrees and is incorporating this value into today's proposed calculation procedures.

Further, today's proposal would require all water heaters to be tested with inlet water temperature of 58 °F±2 °F. This represents a change from the existing test procedures for storage type water heaters which specify an elevated inlet water temperature of 70 °F when conducting tests. This temperature was specified to avoid the burden of cooling the inlet water during testing when local tap water temperatures were in excess of the national average. As with the thermostat setting provisions discussed above, DOE does not now perceive a need to maintain the elevated inlet water testing provisions. Consequently, today's proposal would require 58 °F±2 °F inlet water temperatures to be supplied in the actual laboratory testing of all water heaters.

5. Ambient Air Temperature

Today's proposal would establish an ambient air temperature of between 65 °F to 70 °F for the testing and rating of all water heaters.

In response to the 1984 proposal, eight commenters addressed the ambient air temperature specifications of the proposed rule. DOE proposed an ambient air temperature specification of 65 °F±2 °F for testing heat pump water heaters. For testing gas, oil and electric storage water heaters, DOE proposed to change the existing test procedure requirement that the average ambient air temperature be between 65 °F and 85 °F for the duration of the test and not be permitted to vary more than ±7 °F from its average value throughout the duration of the test to a requirement that the ambient air temperature be 75 °F±7 °F for the duration of the test. Both the existing test procedure and the 1984 proposed changes would require that the average ambient air temperature be determined over the duration of the test and that the test results be mathematically adjusted to reflect an assigned ambient air temperature for storage water heaters.

DEC International commented that the 1984 proposed ambient air temperature specification of 65 °F, although lower than the GAMA heat pump water heater test procedure ambient air temperature specification of 75 °F, is acceptable (DEC International, No. 1, at 1 and 2).

Mr. Robert E. Cook recommended that all water heaters be tested at an adjusted ambient temperature of 65 °F. He stated that an ambient temperature of 55 °F would have a much more adverse impact on the performance of a heat pump water heater than that temperature would have on the performance of a conventional electric water heater. He also concurred with DOE's observation that the nature of operation of a heat pump water heater will result in lower ambient temperatures in the vicinity of the water heater than would be found with an identically located conventional electric water heater. If DOE does not provide an upward adjustment of the ambient air temperature when testing conventional electric water heaters, Mr. Cook contends that heat pump water heaters may show an unjustified performance improvement over conventional water heaters (Cook, No. 9, at 2).

Florida Power and EEI submitted essentially identical comments on this issue. Both stated that the assumption of

an average room ambient temperature of 55 °F fails to take into account the fact that most water heaters are installed in interior building spaces or spaces subject to some median temperature between indoor and outdoor conditions, such as garages or utility rooms. Both commenters contend that a location that has an average year-round temperature of 55 °F would certainly be subject to below freezing temperatures part of the year to compensate for the higher summer temperatures. They pointed out that no water heater would be installed in a space subject to temperatures below freezing. Both commenters further stated that the discussion of ambient temperatures in the 1984 proposal concentrates on lower air temperatures in utility spaces in the wintertime without giving consideration to their higher temperatures during the summer. The result of this annual effect would be to move the average temperatures close to that of a water heater that is located in indoor spaces since the heat pump water heater cools the space in which it is installed during its operation. Florida Power concluded that a 65 °F ambient temperature for the heat pump water heater is logical if 70 °F is used as the comparable ambient temperature for other storage water heaters and that the use of a 70 °F room temperature will simplify the test procedure and the calculation of recovery efficiency and storage losses. EEI concluded that the use of a 70 °F room temperature would be more realistic and would provide a better indication of recovery efficiency and standby loss. (Florida Power, No. 12, at 1, 2, and 3; and EEI, No. 18, at 4.)

NRDC stated that DOE's reasoning stated in the 1984 proposal concerning the 65 °F ambient temperature appears to be reasonable. For consistency though, this ambient temperature should be the same for all types of water heaters. One basis for the 65 °F temperature assumption, which NRDC remarked was not discussed by DOE, is that it is roughly midway between the national average annual ambient temperature of 55 °F and a typical average indoor temperature in the low 70's. This average will reflect the fact that some water heaters are located in conditioned spaces, while others are located in unconditioned or semi-conditioned spaces. (NRDC, No. 13, at 6.)

E-Tech commented that the proposed ambient air temperature specification for heat pump water heaters is too low. E-Tech contends that heat pump water heaters will be sold primarily for installation in residences which have more favorable temperatures, meaning either that the climate is warmer or that the unit can be located near a waste heat source. E-Tech recommends that the ambient air temperature specification for heat pump water heaters be 75 °F±2 °F. (E-Tech, No. 15, at 1).

Sears did not comment directly on whether DOE's proposed ambient air temperature specification for testing heat pump water heaters was appropriate. Rather, Sears addressed the differences between the stored water temperature and the ambient air temperature resulting from DOE's proposed temperature specifications. Sears commented that comparisons between heat pump water heaters and conventional water heaters are, at best, quite difficult to make. Sears said the problem lies in the differences between stored water temperature and ambient air temperature. Under the DOE proposed amendments, heat pump water heaters would have a temperature differential of 80 °F between the ambient air and the stored water whereas conventional water heaters would have a 90 °F differential. These differences affect standby loss and, therefore, average daily energy consumption. To make it easier to compare the energy efficiency of the two different types of water heaters, Sears recommended standardizing the difference between the ambient air temperature and the stored. water temperature in the test procedure for water heaters to 80 °F for all water heaters. (Sears, No. 21, at 2.)

GAMA commented that the proposed ambient air temperature specification of 65 °F for testing heat pump water heaters is too low. GAMA noted that DOE stated in its proposed rule that it has no data to support this specified ambient air temperature. It was also noted that DOE's proposed ambient air temperature specification for testing gas, oil and electric storage water heaters is 75 °F±7°. GAMA recommended that DOE use this same ambient air temperature specification for testing heat pump water heaters. (GAMA, April 26, 1984, at 17.)

DOE and NBS have examined the matter of ambient air temperature since the time of the 1984 proposal. Specifically, in a report entitled "A Review of Energy Use Factors for Selected Household Appliances," NBSIR 85–3220, August 1985, NBS stated that it would be difficult to justify the current value of 55 °F as a national average ambient water heater temperature based on a critical review of the available data. NBS believes a value of 65 °F to 70 °F is more appropriate.

As with supply water temperature and thermostat setting discussed above, DOE and the commenters are seeking a consistent basis across all water heaters. In view of the comments received and the NBS recommendation, DOE believes the best basis of comparison for all water heaters will be achieved by specifying ambient air temperature to be maintained during testing of between 65 °F and 70 °F, and for the purposes of calculation, the room air temperature would be as measured during the test.

6. Relative Humidity Specification

Today's proposal includes a relative humidity specification for the testing of heat pump water heaters of 50 percent plus or minus three percent.

In response to the 1984 proposal, five commenters indicated that the relative humidity specification of 40 to 60 percent for the simulated use testing of heat pump water heaters permits too wide a tolerance that will adversely affect test results.

DEC International stated that the proposed specification on relative humidity (between 40 percent and 60 percent) is too variable since heat pump water heaters will be affected by such changes. A suggested number was 50 percent relative humidity with a tolerance of plus or minus 2 percent. (DEC International, No. 1, at 2.)

Borg-Warner commented that a plus or minus 10 percent tolerance on relative humidity is entirely too high. It was stated that the actual capacity of a heat pump water heater is sensitive to wet bulb temperature (i.e. relative humidity). A tolerance of plus or minus 0.75 °F on the wet bulb temperature was suggested. (Borg-Warner, No. 7, at 1.) (DOE notes that at a specified dry bulb temperature of 65 °F and relative humidity of 50 percent, the wet bulb temperature is 54.2 °F; then if the wet bulb temperature varies plus or minus 0.75 °F about this specification, the corresponding relative humidity range would be 53 percent to 47 percent.)

E-Tech said that most testing laboratories can hold the relative humidity during testing within plus or minus one percent. E-Tech theorized that most manufacturers would hold a relative humidity level of 59 percent plus or minus one percent during testing to achieve the best performance. It was recommended that the relative humidity be specified to be 50 percent plus or minus one percent for the duration of testing. (E-Tech, No. 15, at 2.)

GAMA commented that the proposed relative humidity specification of 40 percent to 60 percent allows for

significant variation in the efficiency measurement of heat pump water heaters and would introduce significant error into any attempt to verify the efficiency rating of a heat pump water heater. GAMA provided data from the testing of two heat pump water heaters at 40 percent relative humidity and 60 percent relative humidity which indicates that humidity does have an effect on the performance of heat pump water heaters (ETL Testing Laboratories, Inc., Report No. 463539, May 14, 1984). GAMA suggested that DOE adopt a relative humidity specification of a dry bulb temperature of 75 °F±0.5 °F and a wet bulb temperature of 62.5 °F±0.3 °F. (GAMA, No. 19, at 13; and April 26, 1984, at 17.) (DOE notes that this recommended specification also reflects GAMA's recommendation that the ambient temperature specification be revised from 65 °F to 75 °F.)

Sears stated that the proposed relative humidity specification is too great since the sensitivity of heat pump water heaters to changes in relative humidity varies widely between different models. Sears recommended that DOE adopt the relative humidity specification used by GAMA in its test procedure of 50 percent plus or minus 3 percent. (Sears, No. 21, at 2.)

The relative humidity tolerance in the 1984 proposal was based upon a limited amount of testing of heat pump water heaters at NBS where tests from 35 percent relative humidity to 65 percent relative humidity showed an insignificant variation in test results. It was the intent of DOE to permit the broadest range of conditions where it was believed the significance was minor in order to make the testing less burdensome to perform. Further testing conducted by NBS confirms the commenters' recommendation that the relative humidity specification be 50 percent plus or minus 3 percent. This specification is included in today's proposal for heat pump water heaters only, because for other water heaters little or no effect in test results could be found from variations in relative humidity.

7. Achieving Stored Water Temperature With Heat Pump Water Heaters

As discussed above, today's proposal would require testing of all storage water heaters with a stored water temperature of 135 °F.

The 1984 proposal called for replacing any nonadjustable thermostat on a heat pump water heater with an adjustable thermostat in cases where the heat pump water heater could not achieve the required stored water temperature for test purposes of 145 °F±3 °F. It also stipulated that for heat pump water heaters with two thermostats, the thermostat which controls the electric resistance heating element shall be set to yield a maximum tank temperature after cut-out of 145 °F±3 °F for the top thermocouple, unless specified differently by the heat pump water heater manufacturer, in which case it was to be set in accordance with the heat pump water heater manufacturer's instructions. Four comments were received on the 1984 proposed requirement.

DEC International stated that the thermostat setting for the electric resistance heating elements of a heat pump water heater with or without storage tank should be according to the manufacturer's instructions. (DEC International, No. 1, at 2.)

Mr. Robert E. Cook stated that owners of heat pump water heaters will not disconnect the electric resistance heating elements on the tank. Rather, they are likely to leave the upper heating element operational to act as a booster heater to offset the lower stored water temperature or the slower recovery, or both, that are characteristic of heat pump water heaters. Mr. Cook agrees with DOE's proposal regarding the setting of thermostats for electric resistance heating elements on heat pump water heaters. (Cook No. 9, at 2.)

E-Tech commented that the test procedure must not provide for altering the design of heat pump water heaters. Rather than replacing thermostats, the test procedure should stipulate that the heat pump water heater manufacturer's recommendations found in the operating manual for the unit be followed to achieve the requisite stored water temperature. (E-Tech, No. 15, at 2.)

GAMA commented that the 1984 proposal's provision to replace a non-adjustable thermostat is totally inappropriate since it alters the design of the water heater and, in essence, does not test the efficiency of the water heater as designed. GAMA recommended that DOE allow the auxiliary electric resistance heating elements to raise the stored water to the specified temperature in those cases where the heat pump water heater thermostat cannot reach that temperature. (GAMA, April 26, 1984, at 18.)

The change in the thermostat setting from 145 °F to 135 °F for heat pump water heaters that is discussed in Item II.d.2, above, is thought to allay much of the concerns of the commenters on this issue. Nevertheless, DOE does concur with the comments that it is improper to alter the design of heat pump water heaters for testing purposes by requiring replacement of their thermostats if they cannot achieve the specified test temperature. Such an alteration would cause the heat pump water heater to operate during the test in a manner that would be uncharacteristic of its typical operation in actual consumer usage. Since consumers seeking higher stored water temperatures for heat pump water heaters would likely follow the manufacturer's instruction for doing so, DOE considers this to also be the appropriate procedure for achieving the required mean tank temperature for test purposes. Today's proposal provides that in cases where the maximum setting of the heat pump water heater thermostat does not achieve the specified maximum mean tank temperature of 135 °F±5 °F, the heat pump water heater manufacturer's instructions for achieving higher stored water temperatures shall be followed in order to satisfy this specification.

8. Specification for Standard Test Electric Storage Water Heater

Today's proposal maintains the 1984 proposal for heat pump water heaters without a storage tank, except for a slight change in the specification for the "standard test electric storage water heater."

In the 1984 proposal, DOE provided for testing heat pump water heaters without storage tanks using a "standard test electric storage water heater." The 1984 proposed calculations allowed determination of energy factors and energy consumptions for the standard storage water heater and other water heaters of similar design but of different storage capacity. The proposed specification for the "standard test electric storage water heater" stated, in part, that it shall have a rated storage capacity of 52 gallons, as specified by the manufacturer on the water heater nameplate and shall have a standby loss of 0.009±0.0005 per hour. Four comments were received regarding this proposed specification.

DEC International commented that there should be a provision in the test procedure to show the effect of operating a heat pump, water heater without storage tank connected to a poorly insulated tank. It was stated that such a provision is needed to permit a consumer to compare the cost of heating water with a heat pump water heater with storage tank to that of a heat pump water heater without storage tank connected to a poorly insulated tank. DEC International said that it has found this to be the more typical case. (DEC International, No. 1, at 1 and 2.)

Borg-Warner commented that it had purchased two different commercially available water heaters, both with a rated storage capacity of 52 gallons, and upon measuring them, found one to have an actual storage capacity of 45.5 gallons and the other, 56 gallons. Borg-Warner stated that this kind of variation in storage capacity could lead to variations in energy consumption measurements in the laboratory. Borg-Warner recommended that DOE specify a tolerance on the storage capacity of the standard test electric storage water heater. (Borg-Warner, No. 7, at 1.)

Mr. Robert E. Cook commented that he agrees that a 50/52 gallon electric storage water heater is the proper storage capacity selection for testing heat pump water heaters without storage tanks. (Cook, No. 9, at 2.)

GAMA commented that the proposed specification for the storage capacity of the standard test electric storage water heater permits too great a tolerance. GAMA recommended that the test tank storage capacity to be specified be 47 gallons plus or minus 0.5 gallon true capacity. (GAMA, April 26, 1984, at 17.) Because current industry standards permit the true storage capacity of electric storage water heaters to be 10 percent below their nominal rated storage capacity, GAMA stated that most manufacturers of electric storage water heaters are able to hold production tolerances close enough such that their 52 gallon nominal rated storage capacity electric storage water heaters have a true storage capacity of about 47 gallons. GAMA provided a further clarification that 47 gallons was the minimum volume permitted by the industry standard for the actual storage capacity of a 52 gallon nominal rated storage capacity electric storage water heater. (GAMA, April 26, 1984, at 26, 36, 37, 45 and 46.)

Commenters have pointed out that the true storage capacity of an electric storage water heater is permitted to vary widely from its rated storage capacity. Most water heater manufacturers are able to hold production tolerances close to the lower limit of the tolerance range. This results in water heater models with storage capacities consistently below their rated storage capacity. Yet, DOE understands that some water heater manufacturers either cannot hold production tolerances this tightly or prefer to rate the storage capacity of their water heaters closer to their true storage capacity. Consequently, DOE's proposed storage capacity specification for the standard test electric storage water heater, which states that the rated storage capacity shall be 52 gallons, would permit a wide variation in the true storage capacity of such units. This high degree of variability in true storage capacity would translate into a high degree of variability in test results. The energy lost through the jacket of the standard test electric storage water heater, rated at 52 gallons storage capacity, would be less for units with true storage capacities near the lower end of the permissible range than it would for units with true storage capacities at or greater than their rated storage capacity of 52 gallons. Also, the results of the first hour rating water draw test would be affected since it is likely that more water could be withdrawn from standard test electric water heaters of higher true storage capacity than those of lower capacity.

Therefore, in response to the comments made, DOE has revised its proposed storage capacity specification for the standard test electric storage water heater to be used for testing heat pump water heaters without storage tanks. Today's proposal would require the storage capacity to be 47.0 gallons, plus 1.0 gallon, minus zero gallon. This one-sided tolerance on the storage capacity specification was prompted by GAMA's statement that 47 gallons was the minimum volume permitted by the industry standard for the actual storage capacity of a 52 gallon nominal rated electric storage water heater, and GAMA's request that the total tolerance permitted be 1 gallon.

Regarding the comment on providing consumers information on the cost of operation of heat pump water heaters without storage tanks connected to poorly insulated tanks, DOE already provides for the determination of the estimated annual operating cost of heat pump water heaters without storage tanks when connected to water heaters of different storage capacities. To add tank insulation as a variable into this procedure would yield more information to consumers but, at the same time, it would further complicate the consumer's decision-making process. To ask a consumer to account for the insulation on his present water heater (which the consumer frequently is in no position to ascertain) as well as its actual storage capacity in making a heat pump water heater purchasing decision, seems to be excessively burdensome and prone to error and misunderstanding. Therefore, DOE maintains its rationale for specifying the single standby loss of the standard test electric storage water heater to be 0.009 ± 0.0005 per hour found in the 1984 proposal. (*See* 49 FR 4872.)

9. Interconnecting Piping Specification for Heat Pump Water Heaters Without Storage Tanks

Based upon a review of comments and further study by DOE, today's proposal differs from the 1984 proposal regarding the interconnecting piping specification for heat pump water heaters without storage tanks.

One commenter, Borg-Warner, commented on the 1984 proposal that heat pump water heaters without storage tanks should be connected to a standard test electric storage water heater as specified by the manufacturer using 10 feet $\pm$0.5 feet of tubing. Borg-Warner noted that no mention was made regarding insulation of the tubing. Borg-Warner recommended that the tubing be insulated in accordance with the manufacturer's instructions. (Borg-Warner, No. 7, at 1.)

DOE concurs with this recommendation and is proposing this recommended change to the specification. Further, DOE is proposing other changes to the procedure for connecting heat pump water heaters without storage tanks to standard test electric storage water heaters to better insure that heat pump water heaters without storage tanks will be tested in a manner reflective of how consumers will use them. To connect the unit to be tested to the standard test tank, today's proposal would require the use of the tubing provided with the kit for installing a heat pump water heater without storage tank if the manufacturer offers such a kit for such unit, otherwise 8 feet $\pm$0.5 feet of tubing would be used. In both cases, the tubing would be insulated per the manufacturer's installation instructions.

10. Desuperheater Water Heater Test Procedure

Today's proposal does not cover "desuperheater water heaters" as was suggested by a commenter.

In response to the 1984 proposal, one commenter, Mr. Robert E. Cook, stated that he considers the scope of the DOE test procedure too narrow and that devices that recover heat from the condenser side of a home air conditioner and deliver the heat to a water heater (commonly referred to as "desuperheater water heaters") should be included. Mr. Cook comments that units of this type are gaining market attention and market share at a far greater rate than are heat pump water heaters. Mr. Cook does observe, though, that a literal reading of DOE's proposed definitions for heat pump water heaters does appear to include such

desuperheater water heaters. (Cook, No. 9, at 1.)

DOE has not investigated desuperheater water heaters. Also, DOE does not consider the test procedure proposed today applicable for testing desuperheater water heaters because it does not address the conditions of operation of the air conditioner which supplies heat to the desuperheater water heater. Therefore, DOE does not intend to propose test procedures for such devices at this time. In response to Mr. Cook's observation, DOE has made changes to its definitions to clarify that only "dedicated" heat pump water heaters, i.e. products where the sole purpose of the heat pump is to heat domestic water, would be covered by today's proposal.

11. Definition of Heat Pump Water Heater

Based on comments on the 1984 proposal, today's proposal includes changes in the 1984 proposed definition of heat pump water heater.

One commenter, DEC International, remarked that DOE's proposed definitions of a "heat pump water heater with storage tank" and a "heat pump water heater without storage tank" are too broad in coverage. DEC International stated several models of heat pump water heaters it manufactures for commercial application would fall under the coverage of the proposed definitions. DOE proposed that heat pump water heaters with power input ratings of 12 kilowatts or less be covered by the test procedure. DEC International recommended that a maximum power input rating of 6 or 7.5 kilowatts would be more appropriate to insure that only residential models of heat pump water heaters fall under the coverage of the definitions and not commercial models. (DEC International, No. 24, at 1).

When DOE drafted its 1984 proposal, DOE included the same limit on the input power rating as used in its existing definition of an electric storage water heater, i.e. 12 kilowatts. The intent of this was to insure that all heat pump water heaters which are likely to be used by individual households would be covered by the DOE test procedure. Using the same input power specification as used for electric storage water heaters appeared to be appropriate to fulfill this intent. DOE's further evaluation of this premise brought about by DEC International's comment revealed that DEC International was correct. The proposed definition of heat pump water heaters covers units which are intended for commercial application and are unlikely to be found in household use. DOE has, therefore, adopted DEC International's recommendation that the upper limit on the input power rating of heat pump water heaters to be covered by the test procedure be 7.5 kilowatts.

12. Test Procedure Specifications Effect On Thermostat Performance

As mentioned above in II.d.2, today's proposal requires thermostat setting at 135 °F for all water heaters.

In response to the 1984 proposal, two commenters, Florida Power and EEI, made essentially the same comment that the test procedure thermostat setting specification for gas, oil and electric storage water heaters of 165 °F causes thermostats to be manufactured to provide accurate control at this test temperature with an attendant sacrifice in their capability to control water temperature at lower, normal water usage temperatures. (Florida Power, No. 12, at 1; and EEI, No. 18, at 4).

Since today's proposal would require testing at a thermostat setting of 135 °F, DOE believes these comments are now moot.

13. Alternative Standby Loss Test Method

Today's proposal does not change the standby loss test method as suggested by a commenter to the proposal.

In response to the 1984 proposal, Florida Power commented that the standby loss test for gas, oil and electric storage water heaters should be terminated at the first subsequent thermostatic cut-out following an elapsed time of 48 hours (24 hours in today's proposal) from the start of the test. The existing and proposed test procedure calls for the test to be terminated at a specified elapsed time from the start of the test regardless of whether the main burner or a heating element is operating. Florida Power said that adopting its suggestion would insure that the standby loss test is conducted over complete heating cycles. (Florida Power, No. 12, at 3).

While the existing and proposed test procedures do not provide for determining the standby loss of a water heater over complete heating cycles, they do account for differences between the stored water temperature at the start of the test and at the end of the test to normalize the test data to simulate identical starting and ending conditions. Adopting Florida Power's proposal would increase the burden of testing by lengthening the standby loss test. Additionally, it would add uncertainty to a manufacturer's test scheduling since the standby loss test for a given test unit may not end for many hours after the specified time period has elapsed. Since no specific information was provided to show that the results obtained from the current or proposed standby loss test approach are not representative of actual water heater standby operation, Florida Power's proposal has not been adopted in today's proposal.

14. First Hour Rating Test

Regarding the first hour rating test, today's proposal essentially maintains the provisions of the existing and 1984 proposal, except as noted in item II.a above.

In response to the 1984 proposal, two comments were received regarding the first hour rating test for water heaters.

The California Energy Commission (CEC) recommended changing the water draw test to begin immediately upon thermostat cut-in instead of the current requirement that it begin immediately upon thermostat cut-out. It was stated that this would more accurately reflect the temperature and quantity of water that a consumer is likely to receive. (California Energy Commission, No. 8, at 1).

Mr. Robert E. Cook commented that he agrees with the 1984 proposal to change the water draw rate from 5 gallons per minute to 3 gallons per minute in the first hour rating water draw test because this is more reflective of present residential use patterns. (Cook, No. 9, at 3).

DOE does not consider the California Energy Commission's proposal to be an improvement on the current first hour rating water draw test approach. The current specification for starting the test yields the maximum value for the amount of water withdrawn from the water heater, while the CEC proposal would yield the minimum value. Why the minimum value for this test would be any more reflective of the quantity of water that a consumer is likely to receive than the maximum value is unclear to DOE. Adopting this recommendation could have the effect of encouraging redesign of water heater thermostats to obtain cycling performance which maximizes the value of the water draw under the specified conditions of the first hour rating water draw test, i.e. frequent burner, heating element, or heat pump cycling to maintain a higher stored water temperature averaged over time. Such redesign, if it were to occur, could possibly have a detrimental effect on the energy efficiency of water heaters in actual usage or on the overall utility of water heaters to consumers. While these potential adverse impacts of adopting the California Energy Commission's

recommendation are merely speculation at this point, DOE does not see any adverse impacts associated with the current approach nor any particular advantage of CEC's recommendation. For these reasons, DOE has not adopted this recommendation in today's proposal.

Mr. Cook's comment regarding DOE's proposal to change the water draw rate specification was supportive of the proposed change. However, DOE has changed its position on this matter as discussed above in item II.a. Consequently, DOE is not proposing the 3 gallon per minute rate for all water heaters, but rather, retaining the 5 gallon per minute rate of the existing test procedures.

15. Alternate Measures of Efficiency

Today's proposal does not include an alternate measure of efficiency as suggested in comments on the 1984 proposal.

In response to the 1984 proposal, two commenters, Florida Power and EEI, offered essentially identical recommendations for alternate useful measures of efficiency that could be included in the test procedure. They recommended that alternate useful expressions of recovery efficiency would be Btu per gallon or watt-hours per gallon normalized to a standard temperature difference, and "net recovery efficiency" determined by dividing the energy imparted to the water during recovery by the quantity of the energy consumed during recovery minus the standby losses during recovery. They also recommended that standby loss be expressed directly as energy loss per unit time rather than as a percentage of the stored energy of the water in the tank lost per unit time. Both commenters remarked that these alternate measures of efficiency facilitate the calculation of the energy consumption of a water heater for differing amounts of hot water use and temperature conditions. Thus, they concluded that EnergyGuide labels could be redesigned to permit a consumer to better estimate the operating cost of a particular model of water heater for his particular conditions of operation and usage. (Florida Power, No. 12, at 3 and 4; and EEI, No. 18, at 5).

DOE agrees with the commenters that the suggested alternate measures of efficiency could prove useful for the purpose stated; however, DOE has not incorporated any of these alternate measures of efficiency into today's proposal because they are not necessary for determining the estimated annual operating cost of a water heater over and above the existing measures of efficiency which are already a part of the test procedures.

16. Installation of Water Heaters: Water Pipes and Heat Traps

As a result of received comment and studies by NBS, today's proposal would change a number of testing installation provisions.

In the 1984 proposal, DOE proposed changes to the installation requirements for water heaters. The proposed changes called for bare copper pipes to be connected to the water heater inlet and outlet connections and heat traps to be installed only if they are an integral part of the shipped water heater or are included with the shipped water heater. The existing test procedure called for these pipes to be insulated and for heat traps to be installed where these pipes connect to the pipe connections on the water heater. In addition, the existing test procedure calculations allowed enhancement of efficiency rating for those water heaters shipped with heat traps. Six comments were received on this proposed change.

DEC International commented that it agrees with the proposed requirement to let the effectiveness of heat traps be reflected in the test results. (DEC International, No. 1 at 2.)

Mr. Robert E. Cook supported the proposal to eliminate the arbitrary fixed energy credits for heat traps and the substitution of an actual measured performance test. (Cook, No. 9, at 33.)

The Bock Corporation (Bock), a manufacturer of water heaters, commented that the net effect of eight feet of uninsulated copper pipe will greatly increase the heat loss from the water heater with or without heat traps. Bock stated that if the intent of the proposed revisions to the installation requirements is to let the effectiveness of heat traps be reflected in the results of the standby loss test, then it recommends that a better approach would be to test them separately, such as by the method used by NBS as described in a letter report to DOE of May 1982. Bock contends that testing heat traps separately would result in a more accurate determination of their effectiveness while preserving the existing DOE test methodology of treating water heaters as separate units, isolated from extraneous piping, under strict controlled test conditions. Another concern expressed by Bock was that uninsulated piping leads to greater variability in test results, reducing the validity of the test procedure as a means of comparing water heaters. Bock said that it had not conducted comparison tests of the present and proposed installation configurations; however, it expects that the proposed installation configuration would increase the measured standby loss of water heaters above the limits set by ASHRAE, the State of California, and other similar codes. To Bock, this raises the question of whether these codes will be revised accordingly. Bock considers this doubtful. To meet these codes under DOE's proposed installation requirements, Bock said that items such as flue dampers would have to be considered, adding more to the cost of the unit. (Bock, No. 10, at 1.)

Amtrol stated that when DOE initially prescribed the test procedure for water heaters, it established that the standby loss test should be run with the pipes connected to the unit well insulated and with heat traps in place since only the water heater was to be tested, not the system. Amtrol believes that the installation requirements of the existing test procedure are still the most appropriate provisions for the same reasons as previously endorsed by DOE and is opposed to the proposed requirement of four feet of vertical uninsulated copper pipe (or tubing) attached to the water heater inlet and outlet connections. Amtrol also commented that the effectiveness of heat traps should be accounted for by using fixed energy credits which agree with the latest NBS report evaluating heat traps. (Amtrol, No. 14, at 1.)

Bradford-White Corporation (Bradford-White), a manufacturer of water heaters, stated that it strongly opposes the proposal to test water heaters with four foot sections of uninsulated pipe and the deletion of the heat trap credit. The basis for the objection is the burden placed on manufacturers versus the minimal benefit, if any, achieved by consumers. Bradford-White contends that the need to eliminate pipe heat losses while testing a water heater has not changed since the original test procedure was published on October 4, 1977. Testing a water heater with four foot sections of uninsulated copper pipe will provide results that reflect water heater energy usage plus the energy lost through the pipes. Should this portion of the proposal be adopted, it will necessitate a retesting of all presently manufactured units labeled under the Federal Trade Commission's EnergyGuide labeling program. Bradford-White manufactures about seventy-five models, necessitating at least one hundred and fifty individual tests. Bradford-White further remarked that this test burden would be brought about because DOE believes that the proposed test method is the most

appropriate to account for the contribution of heat traps to improving the efficiency of water heaters even though DOE states that the magnitude of the energy savings achievable by even the best performing heat trap would have only a minimal effect on the energy consumption of any water heater. Bradford-White said that this seems a great price to pay for only a minimal effect on energy consumption.

Bradford-White stated that it markets on a national basis and that many states have minimum efficiency requirements. These requirements, for the most part, reference American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 90A–1980 and determination of compliance is based on tests conducted in accordance with the DOE test procedure. Should the proposal for testing with uninsulated pipe be adopted, Bradford-White claims many of the models currently meeting these various state standards will fail to meet the standby loss requirements under the proposed test procedure. It was stated that these previously acceptable water heaters will have failed not because of a change in construction, but only because the test procedure will have changed. This will necessitate a massive redesign program to once again bring these water heaters in compliance with the requirements.

Bradford-White said that it is a relatively small privately owned manufacturer. The amount of testing and redesign which would be brought about, should this proposal be enacted, would be burdensome and could have potential negative effects on the company. Bradford-White said that other manufacturers would face similar testing and redesign burdens.

It is Bradford-White's position that the present method of testing with insulated pipe and heat traps installed should be maintained. This would avert the massive testing and redesign programs which would undoubtedly follow. The question of heat trap credits should then be addressed separately. Bradford-White recommended that DOE initiate further testing and study of the various types of heat traps leading eventually to a standardized test method for heat traps which would provide a credit figure to be used when calculating the daily energy consumption for water heaters. Until such time, the present credit figure should be maintained. (Bradford-White, No. 16, at 1–4.)

GAMA stated that it is opposed to the deletions of the installation of heat traps in the hot water outlet and the cold water inlet piping of the water heater and of the credit for heat traps. GAMA claimed that the proposed amendment will be of minimum benefit to consumers since the amendment may only provide a slightly better estimate of the energy savings associated with the use of a heat trap. GAMA said that, despite the slight impact that this minor fine tuning by DOE will have on water heater efficiency ratings, it would place a significant burden on the water heater industry.

GAMA notes that: (1) the present DOE water heater test procedure has been in use for over six years; (2) the Federal Trade Commission's EnergyGuide labels, which disclose estimated annual operating costs based on this test procedure, have been placed on water heaters for about four years; and (3) many States require compliance with the minimum efficiency requirements for water heaters specified in ASHRAE Standard 90A–1980 which references the DOE water heater test procedure. GAMA said about 700 models of residential gas, oil, and electric storage water heaters are available in the United States today. If the proposed amendment to delete the installation of heat traps and the credit for heat traps were adopted, all 700 models of water heaters would have to be retested for efficiency and their corresponding estimated annual operating costs recalculated. Furthermore, the EnergyGuide labels on all those models of water heaters would have to be revised. Also, GAMA remarked, in many cases, this change in the DOE water heater test procedure would result in some models of water heaters which presently comply with ASHRAE standards becoming non-compliant models, even though there has been no change in the design of the water heater, as a result of the increase in their rated standby loss brought on by the deletion of heat traps. This would require manufacturers to either redesign those models of water heaters so that they again would comply with the ASHRAE standards or remove those models which do not comply from those markets which require compliance with ASHRAE standards. In either case, GAMA cited a significant disruption of the water heater industry.

GAMA included two reports of tests conducted at ETL Testing Laboratories to examine the proposed amendments to the water heater test procedure. Tests showed that the increase in standby loss experienced by using two four-foot sections of uninsulated copper pipe and no heat traps was about 30 watts. Based on these test results, GAMA concludes that the proposed amendment would effect a slight adjustment in the estimated annual operating cost figure of all water heaters; however, it would affect all water heaters equally and would not alter the relative-ranking of various models. In this sense, GAMA contends, the proposed amendment does not improve the information made available to consumers to aid them in selecting a water heater. Weighing this very minor adjustment in the estimated annual operating cost figure which appears on the EnergyGuide label against the hundreds of thousands of dollars that would have to be spent to retest water heaters and, in some cases, redesign water heaters as a result of the proposed amendment, makes it clear, according to GAMA, that the proposed amendment to the installation requirements for water heaters should not be adopted.

Finally, GAMA commented that, as DOE noted, the approach concerning the installation of heat traps in the existing test procedure was taken to eliminate pipe heat losses from affecting the measures of energy consumption of a water heater and yet credit water heaters supplied with heat traps by the manufacturer. GAMA emphasizes that the need to eliminate external losses when testing the efficiency of a water heater still remains, and is of critical importance. GAMA argues that it is unfair and illogical to impose an external factor in the measurement of the efficiency of a water heater when the manufacturer has no control over that external factor. Furthermore, there is no evidence that 4 feet of uninsulated vertical pipe is representative of the average field installation. (GAMA, No. 19, at 3–8; and April 26, 1984, at 15 and 16.)

There are a number of matters to be considered on the issue of the installation, or "hook-up," of a water heater for test purposes. These matters can be classified under two categories: (1) What are the appropriate installation requirements for testing water heaters? (2) Does the benefit of amending the installation requirements of the existing water heater test procedure justify the cost of retesting all current models of gas, oil and electric storage water heaters if the existing requirements are deemed to be inappropriate? The following discussion addresses these two issues separately.

For the most part, the water heater industry argues that manufacturers of water heaters have no control over how their water heaters are installed in residences. They contend that the approach of the existing test procedure which, from an energy consumption standpoint, effectively isolates the water heater from its inlet and outlet piping is the appropriate approach since the test

results are reflective of the product just as it is manufactured and are not influenced by factors outside of the manufacturer's control.

DOE understands the appeal that its existing test procedure holds for manufacturers of water heaters in this regard. DOE proposed to revise the installation requirements, though, because of a concern that they are not representative of how water heaters are typically installed in residences and lead to test results which are not reflective of the energy use of water heaters in characteristic operation. Heat traps and pipe insulation are normally add-on devices to reduce thermal losses in a water heating/distribution system. DOE expects that few water heaters are installed with such add-on devices because there is little incentive for installers to include these extra cost items in their installation of water heaters. Of course, some models of water heaters come equipped with heat traps in which case DOE expects that they are installed with these heat traps in place. While it is true that water heater manufacturers have little or no control over how their water heaters are installed, all must be connected to the domestic water supply system of a residence using two pipes, one to supply water to the water heater and one to deliver hot water from the water heater to the hot water supply system of the residence. DOE believes that in the typical installation, the pipes connected to the water heater make vertical runs upward from the cold water inlet and the hot water outlet connections to connect to domestic water supply system piping overhead. Given this typical installation, the addition of heat traps and pipe insulation to these vertical pipe runs would significantly reduce the thermal losses that would otherwise occur due to the circulation of stored hot water in the water heater tank rising into the pipes, losing heat to ambient surroundings by the mechanism of convective heat transfer, and then sinking back into the tank as it is displaced by more stored hot water from the tank, perpetuating the cycle. The reduction of these thermal losses has a small but measurable effect on the energy consumption of a water heater that DOE believes should be included in the test procedure.

Since for other reasons, today's proposal would essentially require retesting of all water heaters, the comments received which argue against installation provisions that would require retesting are now actually moot. Consequently, making these changes will have no impact on testing burden. Also, since today's proposal, when considered in its entirety, constitutes a larger difference in the rating of water heaters than the entire effect of installation provisions, the comments made here regarding changes in the ratings are now not considered substantive.

In view of the received comments and in consultation with NBS, DOE believes most appropriate installation provisions are the following:

(1) Pipe insulation and heat traps are to be incorporated into the test rig only if they are shipped with the unit and,

(2) Pipe runs are to be 24 inches long of appropriate size copper pipe with suitable fittings. Each pipe run is to be in the direction of the water heater fitting and the far end of the pipe run is to have an appropriate size 90° copper elbow.

Today's proposal would require these provisions.

17. Flue Pipe Specification for Direct Vent Gas Storage Water Heaters

As a result of received comment, today's proposal includes flue pipe specifications for direct vent gas storage water heaters.

One commenter, GAMA, recommended a change to DOE's installation specification for direct vent gas storage water heaters. The 1984 proposal proposed that direct vent gas storage water heaters "shall be installed with venting equipment as specified in the manufacturer's instructions; however, the vertical length of the flue pipe shall be no greater than 5 feet." GAMA considers the limitation on the vertical length unnecessary. GAMA recommended that if DOE considers some specification on vertical flue length necessary, then GAMA suggests that the specification call for a direct vent gas storage water heater to be tested with the minimum vertical length of flue pipe acceptable for use in accordance with the unit's safety certification. GAMA notes that this recommended specification is similar to the venting conditions which DOE specifies for testing direct vent gas-fired furnaces. (GAMA, No. 19, at 3; and April 26, 1984, at 12, 13, and 20–23.)

DOE agrees with GAMA regarding this matter and has incorporated this change into today's proposal.

e. Miscellaneous

DOE has made other minor technical revisions to its proposed rule in response to comments received which DOE deemed to be clarifying in nature. GAMA suggested that the specification for the outlet pressure of a gas appliance pressure regulator should provide a tolerance of plus or minus 0.3 inch of water column. GAMA noted that the present specification lacks any specific tolerance since it simply requires that the outlet gas pressure be ". . . approximately that recommended by the manufacturer." (GAMA, April 26, 1984, at 13.) Today's proposal reflects changes made in response to such comments.

Additionally, after careful consideration of all comments and in consultation with NBS, DOE has made some editorial and minor technical changes in today's proposal. For example, in the definition of "heat pump water heater without storage tank," DOE has revised the phrase "and which is intended to be connected to an electric, gas or oil storage water heater which has a storage capacity of not less than 20 gallons nor more than 120 gallons" to read as follows "and which is intended to be connected to an electric, gas or oil storage water heater or to some other type of water storage tank, not supplied by the manufacturer so that water heated by the unit can be stored at a thermostatically controlled temperature for delivery on demand." This change was made because the proposed language was unnecessarily restrictive in its use of a fixed storage capacity range and the identification of only electric, gas or oil storage water heaters as "intended" water storage tanks.

Finally, the definition of oil storage water heater has been revised to clarify the coverage of the test procedures. Specifically, oil water heaters with a .75 gallons per hour firing rate are covered by the test procedure as was always intended throughout the DOE test procedure rulemakings.

III. COMMENT PROCEDURE

a. Written Comment

Interested persons are invited to participate in the rulemaking by submitting data, views, or arguments with respect to the proposed amendments set forth in this notice to the Hearings and Dockets address indicated at the beginning of the notice.

Comments (eight copies) should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Water Heater Test Procedures (Docket No. CAS–RM–79–105)." Eight (8) copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and all other relevant information will be considered by DOE before final action is taken on the proposed regulation. Pursuant to the provisions of 10 CFR 1004.11, any person

submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, and seven copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

b. Public Hearing

1. Procedures for Submitting Requests to Speak

The time and place of the public hearing are indicated at the beginning of this notice. DOE invites any person who has an interest in the proposed rule to make a written request for an opportunity to make an oral presentation. Such requests should be directed to the Hearings and Dockets address indicated at the beginning of this notice and must be received by the time specified at the beginning of this notice. Requests may be hand delivered to such address between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday. Requests should be labeled "Water Heater Test Procedures (Docket No. CAS–RM–79–105)" both on the document and on the envelope.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted.

Each person to be heard is requested to submit eight copies of his or her statement to the address and by the date given in the beginning of this notice. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance of the hearing by so indicating in the letter requesting to make an oral presentation.

2. Conduct of Hearing

DOE reserves the right to schedule the respective presentations and to establish the procedures governing the conduct of the hearing. Each presentation shall be limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and 42 U.S.C. 7191, section 501 of the DOE rganization Act, 42 U.S.C. 7101 *et seq.* At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person who wishes to ask a question at the hearing may submit the question in writing to the presiding officer to be asked of any person making a statement at the hearing. The presiding officer will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, (202) 586–6020. In addition, any person may purchase a copy of the transcript from the reporter.

IV. ENVIRONMENTAL REVIEW

Pursuant to section 7(c)(2) of the Federal Energy Administration Act of 1974, a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment.

Since test procedures under the energy conservation program for consumer products will be used only to standardize the measurement of energy usage and will not affect the quality or distribution of energy usage, prescribing test procedures will not result in any environmental impacts. DOE, therefore, has determined that prescribing test procedures under the energy conservation program for consumer products clearly is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Consequently, neither an Environmental Impact Statement nor an Environmental Assessment is required for the proposed rule.

V. REVIEW UNDER EXECUTIVE ORDER 12291

The proposed rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines "major rule" as any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would prescribe test procedures for heat pump and instantaneous water heaters and would make changes to the existing test procedures for water heaters to allow for more accurate determinations of energy efficiency and cost. In the notice of proposed rulemaking regarding energy efficiency standards for eight types of appliances, including water heaters, DOE made estimates of the annual costs to manufacturers of certification and enforcement testing. See Table E–8.2A, Certification and Enforcement Analysis, June 1980, DOE/CS–0170. The upper bound estimate of annual effect on water heater manufacturers of testing water heaters under an energy efficiency standards program was calculated to be $837,000 for testing prototype models, new production models and carryover production model tests. The impact of the test procedure amendments is expected to be less than the standards

program because fewer prototype and new models would be produced. Therefore, less testing would be required. Clearly, the annual effect on the economy would be well under $100 million. The upper bound estimate of certification test costs is equal to a $0.15 per unit cost increase. DOE does not consider this to be a major increase in cost or supportive of a major price increase, so none should occur. Small and large manufacturers of water heaters have expressed to DOE their desire to have this more accurate test procedure, even considering the retesting necessitated thereby. No manufacturer has indicated its opposition to the proposed test procedures. The manufacturers' widespread support for these test procedures is considered to be a reasonable indication of no "significant adverse effects" on industry productivity and competitiveness. DOE, therefore, has determined that prescribing test procedures under the energy conservation program for consumer products does not impose any significant burden on any person, industry, or government entity, and that the proposed rules do not come within the Executive Order's definition of "major rule."

VI. REGULATORY FLEXIBILITY ACT

The Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement (which appears in section 603) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The proposed rule affects manufacturers of water heaters. As previously discussed, the proposed changes would not have significant economic impacts, but rather would simply improve the test procedures. Since small manufacturers of water heaters have proportionately fewer model offerings, and therefore, proportionately smaller testing requirements, DOE believes small water heater manufacturers are equally able to conduct new testing procedures without harmful effects. Therefore, DOE certifies that the proposed rules, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

List of Subjects in 10 CFR Part 430

Administration practice and procedure, Energy conservation, Household appliances.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., February 27, 1987.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: Energy Policy and Conservation Act, Title III, Part B, as amended by National Energy Conservation Policy Act, Title IV, Part 2, (42 U.S.C. 6291-6309).

2. Section 430.2 is amended by revising the definition of the term "Basic model," adding a definition for "electric resistance heating element," revising the definition of the term "water heater," and by removing the definition of the term "immersed heating element", to read as follows:

§ 430.2 Definitions.

* * * * *

"Basic model" * * *

(5) With respect to water heaters, which have the same primary energy source and which, with the exception of immersed electric resistance heating elements, do not have any differing electrical, physical, or functional characteristics that affect energy consumption.

* * * * *

"Electric resistance heating element" means a device which is designed to directly convert electrical energy to heat energy by employing an electrical conductor which opposes the flow of electrical current, resulting in the generation of heat in the conducting material.

* * * * *

"Water heater" means an appliance that heats water for domestic purposes other than for space heating and which must be one of the following:

(1) "Electric storage water heater" means a water heater which stores water at a thermostatically controlled temperature for delivery on demand, which utilizes electricity as the energy source for heating the water, in which heating is solely provided by electric resistance heating elements, which has a manufacturer's specified energy input rating of 12 kilowatts or less at a voltage no greater than 250 volts, and which has a manufacturer's specified storage capacity of not less than 20 gallons nor more than 120 gallons.

(2) "Gas-fired storage water heater" means a water heater which stores water at a thermostatically controlled temperature for delivery on demand, which utilizes gas as the energy source for heating the water, which has a manufacturer's specified energy input rating of 75,000 Btu per hour or less, and which has a manufacturer's specified storage capacity of not less than 20 gallons nor more than 100 gallons.

(3) "Oil-fired storage water heater" means a water heater which stores water at a thermostatically controlled temperature for delivery on demand, which utilizes oil as the energy source for heating the water, which has a manufacturer's specified energy input rating of 104,000 Btu per hour (0.75 gallons of oil per hour firing rate equivalent) or less, and which has a manufacturer's specified storage capacity of not less than 20 gallons nor more than 50 gallons.

(4) "Heat pump water heater with storage tank" means a water heater which stores water at a thermostatically controlled temperature for delivery on demand, which utilizes single phase electricity as the energy source to operate a mechanical refrigeration unit consisting of a compressor, a condenser, an expansion device, a storage tank, and an evaporator designed expressly to extract thermal energy from the surrounding air and deliver it to the water in the unit, which may or may not be equipped with electric resistance heating elements, which has a manufacturer's specified energy input rating of 7.5 kilowatts or less at a voltage no greater than 250 volts, and which has a manufacturer's specified storage capacity of not less than 20 gallons nor more than 120 gallons.

(5) "Heat pump water heater without storage tank" means a water heater which utilizes single phase electricity as the energy source to operate a mechanical refrigeration unit consisting of a compressor, a condenser, an expansion device and an evaporator designed expressly to extract thermal energy from the surrounding air and deliver it to the water in the unit, which has a manufacturer's specified energy input rating of 7.5 kilowatts or less at a voltage no greater than 250 volts, and which is intended to be connected to an electric, gas or oil storage water heater, or to some other type of water storage tank, not supplied by the manufacturer, so that water heated by the unit can be stored at a thermostatically controlled temperature for delivery on demand.

(6) "Gas, oil and electric instantaneous water heater" means a

water heater with a storage volume less than 20 gallons.

* * * * *

3. Section 430.22 is amended by revising paragraph (e) to read as follows:

§ 430.22 Test procedures for measures of energy consumption.

* * * * *

(e) *Water heaters.* (1) The estimated annual operating cost for water heaters shall be—

(i) For a gas or oil storage water heater, the product of the representative average use cycle of 365 days per year times the sum of—

(A) The product of the average daily auxiliary electrical energy consumption in kilowatt-hours per day, determined according to section 4.5.1 of Appendix E or in Btu per day from section 4.1.8 of Appendix E1 of this subpart, times the representative average unit cost of electricity in dollars per kilowatt-hour or Btu as appropriate as provided by the Secretary plus;

(B) The product of the average daily gas or oil energy consumption in Btu per day, determined according to section 4.5.2 of Appendix E or in Btu per day from section 4.1.12 of Appendix E1 of this subpart, times the representative average unit cost of gas or oil, as appropriate, in dollars per Btu as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year;

(ii) For an electric storage water heater, the product of the following three factors:

(A) The representative average use cycle of 365 days per year;

(B) The average daily energy consumption in kilowatt-hours per day, determined according to section 4.5.4 of Appendix E or in Btu per day from section 4.1.12 of Appendix E1 of this subpart; and

(C) The representative average unit cost of electricity in dollars per kilowatt-hour or Btu as appropriate as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year;

(iii) For a heat pump water heater with storage tank, the product of the following three factors:

(A) The representative average use cycle of 365 days per year;

(B) The average daily energy consumption in Btu per day, determined according to section 4.1.12 of Appendix E1 of this subpart; and

(C) The representative average unit cost of electricity in dollars per Btu as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year;

(iv) For a heat pump water heater without storage tank, the product of the following three factors:

(A) The representative average use cycle of 365 days per year;

(B) The average daily energy consumption in Btu per day, determined according to section 4.1.12 of Appendix E1 of this subpart; and

(C) The representative average unit cost of electricity in dollars per Btu as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year; and

(v) For an instantaneous water heater, the product of the following three factors:

(A) The representative average use cycle of 365 days per year;

(B) The average daily energy consumption in Btu per day, determined according to section 4.1.12 of Appendix E1 of this subpart; and

(C) The representative average unit cost of energy in dollars per Btu as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2) The energy factor for water heaters shall be—

(i) For a gas or oil storage water heater, the quotient of the daily hot water energy consumption, determined according to section 4.3 of Appendix E of this subpart, divided by the average daily energy consumption, determined according to section 4.5.3 of Appendix E of this subpart, the resulting quotient then being rounded off to the nearest 0.01; or as determined is section 4.1.16 of Appendix E1 of this subpart;

(ii) For an electric storage water heater, the quotient of the daily hot water energy consumption, determined according to section 4.3 of Appendix E of this subpart, divided by the product of the average daily energy consumption, determined according to section 4.5.4 of Appendix E of this subpart, times 3,413 Btu per kilowatthour, the resulting quotient then being rounded off to the nearest 0.01; or as determined in section 4.1.16 of Appendix E1 of this subpart;

(iii) For a heat pump water heater with storage tank, as determined in section 4.1.16 of Appendix E1 of this subpart;

(iv) For a heat pump water heater without storage tank, as determined in section 4.1.16 of Appendix E1 of this subpart; and

(v) For an instantaneous water heater, as determined in section 4.1.16 of Appendix E1 of this subpart.

(3) The coefficient of performance for a heat pump water heater with or without storage tank shall be the recovery efficiency determined according to section 4.1.9 of Appendix E1 of this subpart, rounded off to the nearest 0.01.

(4) Other useful measures of energy consumption for water heaters shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of Appendix E or Appendix E1 of this subpart.

(5) For a transition period of 6 months from the publication date of this amendment, all measures of energy consumption shall be determined either by the uniform test method for measuring energy consumption of water heaters, as set forth in Appendix E of this subpart or by the amended test method for measuring energy consumption of water heaters, as set forth in Appendix E1 of this subpart. After the transition period, all measures of energy consumption shall be determined only by the amended test method as set forth in Appendix E1 of this subpart; the uniform test method, as set forth in Appendix E of this subpart shall no longer be used.

* * * * *

4. Subpart B of Part 430 is amended by adding Appendix E1, to read as follows:

Appendix to E1 Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Water Heaters

1. Definitions

1.1 "Cut-in" means the time or temperature when a water heater thermostat has acted to increase the energy or fuel input to the heating elements, compressor or burner to cause the heating action to increase.

1.2 "Cut-out" means the time or temperature when a water heater thermostat has acted to reduce the energy or fuel input to the heating elements compressor or burners to a minimum.

1.3 "Design Power Rating" means the nominal power rating that a water heater manufacturer assigns to a particular design of water heater heating means, expressed in kilowatts or Btu per hour as appropriate.

1.4 "Heat Trap" means a device which can be integrally connected, or independently attached, to the hot or cold water pipe connections of a water heater such that the device will develop a thermal or mechanical seal to minimize the recirculation of water due to natural thermal convection between the water heater tank and its water supply pipes and thereby reduce the heat loss to the environment from the hot water stored in the water heater.

1.5 "Instantaneous Water Heater" means a water heater that heats water on demand and the water heating operation is activated by a flow of water. No appreciable volume of hot water is stored in this type of water heater. For this test procedure, any water heater with a water storage of less than 20

gallons is considered to be an instantaneous water heater.

1.6 "Recovery Efficiency" means the ratio of the heat imparted to the water to: (a) In the case of an electrically operated water heater, the energy input to the heating elements, compressor and any auxiliary equipment during the period that the water temperature is raised from the inlet temperature to the outlet temperature during the draw test.

(b) In the case of a gas-fired or oil-fired water heater, the heat content of the fuel and energy consumed by the burners and any auxiliary equipment during the period that the water temperature is raised from the inlet temperature to the outlet temperature during the draw test.

1.7 "Standby Loss" means the ratio of the heat loss per hour to the heat content of the stored water above room temperature.

1.8 "Storage Water Heater" means a water heater that heats and stores water in an insulated tank to provide hot water as needed from the insulated storage tank.

2. Test Conditions

2.1 Installation

Install the storage type water heater according to the manufacturer's directions on a ¾ inch thick plywood platform supported by three 2 x 4 inch runners in such a way that the bottom of the water heater is elevated approximately 4 inches above the floor. For heat pump water heaters without a storage tank supplied by the manufacturer, connect the heat pump water heater to the storage tank described in section 3.1.1 using the installation kit and directions as provided by the manufacturer. If no installation kit is available from the manufacturer use 8 foot long connecting hoses, following the directions provided by the manufacturer. Install the instantaneous type water heater according to the manufacturer's directions. Install connecting piping using copper pipe of the appropriate size to the fittings on the water heater. Only if heat traps and/or piping insulation are supplied with the water heater shall they be installed for testing. Appropriate sized copper fittings will be soldered to the pipe nipples which shall be 24" long extending in a straight direction from the fitting on the water heater with a 90 degree elbow at the end of each pipe nipple. Clearance shall be provided so that none of the piping contacts other surfaces in the test room.

2.2 Flue Requirements for Gas and Oil-Fired Water Heaters

2.2.1 Flue Requirements for Gas-Fired Water Heaters

For a gas-fired water heater having a vertically discharging draft hood outlet, a 5 foot vertical flue pipe extension having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. For a gas-fired water heater having a horizontally discharging draft hood outlet, a 90 degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A 5 foot length of flue pipe shall be connected to the elbow and oriented to discharge vertically upward. Perform all tests with the natural draft established by this length of flue pipe. Direct vent gas-fired water heaters should be installed with venting equipment as specified in the manufacturer's instructions; however, the vertical length of the flue pipe shall be no greater than 5 feet.

2.2.2 Flue Requirements For Oil-Fired Water Heaters

For an oil-fired water heater, established a draft at the flue collar equivalent to at least 0.02 inch of water column during periods of burner firing. For an oil-fired water heater having a vertically discharging draft hood outlet, establish the draft by using a sufficient length of flue pipe connected to the water heater flue outlet and directed vertically upward. For an oil-fired water heater having a horizontally discharging draft hood outlet, a 90 degree elbow having a diameter equal to the largest flue collar size of the draft hood shall be connected to the draft hood outlet. A length of flue pipe sufficient to establish the draft shall be connected to the elbow fitting and oriented to discharge vertically upward. Direct vent oil-fired water heaters should be installed with venting equipment as specified in the manufacturer's instructions.

2.3 Water Supply

During the entire test, maintain the water supply to the water heater inlet at a temperature of 58 °F±2 °F, and at a gauge pressure of between 40 pounds per square inch and the maximum pressure specified by the manufacturer for the water heater under test. If the water supply pressure varies outside of these limits during testing, the heater shall be isolated by use of a shut-off valve in the supply line downstream of the shut-off valve. There shall be no shut-off means between the expansion tank and the water heater inlet.

2.4 Energy Supply

2.4.1 Electrical Supply

For an electric water heater and for the auxiliary electrical system, if any, of an oil or gas water heater, maintain the electrical supply voltage to within ±1 percent of the center of the voltage range specified by the water heater manufacturer on the water heater nameplate throughout the entire operating portion of each test.

2.4.2 Gas Supply

2.4.2.2 Natural Gas

For a gas water heater utilizing natural gas, maintain the gas supply at a normal inlet test pressure immediately ahead of all controls as specified by the manufacturer or if not specified then at 7 to 10 inches of water column. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure at the normal test pressure shall be approximately that recommended by the manufacturer. All burners shall be adjusted to achieve an hourly Btu rating that is within ±2 percent of the hourly Btu rating specified by the manufacturer. Use natural gas with a higher heating value of approximately 1,025 Btu per standard cubic foot. Determine the actual higher heating value, H in Btu per standard cubic foot, for the natural gas to be used in the test, with an error no greater than ±1 percent, and use that value for all calculations included herein. Alternatively, the test can be conducted using "bottled" natural gas of a higher heating value of approximately 1,025 Btu per standard cubic foot as long as the actual higher heating value of the bottled natural gas has been determined with an error no greater than ±1 percent as certified by the supplier.

2.4.2.2 Propane Gas

For a gas water heater utilizing propane, maintain the gas supply at a normal inlet test pressure immediately ahead of all controls at 11 to 13 inches of water column. If the water heater is equipped with a gas appliance pressure regulator, the regulator outlet pressure at normal test pressure shall be approximately that recommended by the manufacturer. All burners shall be adjusted to achieve an hourly Btu rating that is within ±2 percent of the hourly Btu rating specified by the manufacturer. Use propane with a higher heating value of approximately 2,500 Btu per standard cubic foot. Determine the actual higher heating value, Hp, in Btu per standard cubic foot, for the propane to be used in the test, with an error no greater than ±1 percent, and use that value for all calculations included herein. Alternatively, the test can be conducted using "bottled" propane of a higher heating value of approximately 2,500 Btu per standard cubic foot as long as the actual higher heating value of the bottled propane has been determined with an error of greater than ±1 percent as certified by the supplier.

2.4.3 Oil Supply

For an oil water heater utilizing fuel oil, maintain an uninterrupted supply of fuel oil to the water heater during the entire operating portion of the test cycle. Use fuel oil with a heating value of approximately 138,700 Btu per gallon. Determine the actual heating value, Ho, in Btu per gallon for the fuel oil to be used in the test with an error no greater than ±1 percent, and use that value for all calculations included herein. Alternatively, the tests can be conducted using a tested fuel oil with a certified higher heating value of approximately 138,700 Btu per gallon as long as the actual higher heating value of the test fuel oil has been determined with an error or no greater than ±1 percent as certified by the supplier.

2.5 Thermocouple Installation

2.5.1 Thermocouple Installation For Storage Type Water Heater

Install six thermocouples inside the water heater tank. Position each thermocouple measuring junction along a vertical line at the level of the center horizontal plane of each of six non-overlapping sections of approximately equal volume from the top to the bottom of the tank such that each thermocouple is surrounded by water and as far as possible from any heating element, anodic protective device, or a water tank or flue wall. The anodic protective device may be removed in order to install the thermocouples and all testing may be carried out with the device removed. Install thermocouples in both the cold-water inlet pipe and the hot-water outlet pipe not more than six inches from the connections to the water heater, or where those connections are inaccessible, at the closest accessible point to those connections. Install in the test room a thermocouple with junction shielded against direct radiation from the water heater and positioned at the vertical mid-point of the

heater at a perpendicular distance of approximately 24 inches from the surface of the water heater jacket. Provide an associated temperature measurement and indicator system to assure that the temperature indicated for the thermocouple location is within ±1°F of the actual temperature at that location.

2.5.2 Thermocouple Installation for Instantaneous Type Water Heaters

Install thermocouples at the inlet and outlet pipes not more than six inches from the connection to the water heater, or where those connections are inaccessible, at the closest accessible point to those connections. Install the test room thermocouple as described in section 2.5.1.

2.6 Setting The Thermostat

2.6.1 Setting The Thermostat For Storage Type Water Heater

Starting with a tank of unheated water, initiate normal operation of the water heater. After cutout, determine whether the maximum value of the mean tank temperature is within the range of 135 °F ±5 °F. If not, turn off the water heater, adjust the thermostat, empty the tank and refill the tank with unheated water, then initiate normal operation of the water heater, and once again determine the maximum mean tank temperature after cut-out. Repeat this sequence until the maximum mean tank temperature after cut-out is within the range of 135 °F ±5 °F at which time the thermostat is properly set. If a water heater has two thermostats, the thermostat which controls the upper heating element shall be set first to yield a maximum water temperature of 135 °F ±5 °F as measured by the topmost tank thermocouple after cutout. The thermostat which controls the lower heating element shall then be set to yield a maximum mean tank temperature of 135 °F ±5 °F after cutout.

2.6.2 Setting The Outlet Water Temperature For Instantaneous Type Water Heater

Initiate normal operation of the water heater, with a flow rate of 3.0 ±0.25 gallons per minute, measure the outlet flow for three times starting one minute after the start of the flow and each subsequent minute of the four minute draw. Set the outlet water temperature by following the manufacturers instructions, to provide a mean discharge water temperature of 135 °F ±5 °F. If the water heater is unable to provide 3.0 ±0.25 gallons per minute of 135 °F ±5 °F water then reduce the flow rate as necessary to provide discharge water at the specified 135 °F ±5 °F.

2.7 Fuel or Energy Consumption Measurement

Install one or more instruments which measure, as appropriate, and with an error no greater than ±1 percent, the quantity of electrical energy, natural gas, propane or fuel oil consumed by a water heater. Electrical energy consumption is to be expressed in units of kilowatt-hours. Natural gas and propane consumption shall be expressed in units of standard cubic feet, i.e., measured cubic feet corrected to standard conditions of 60 °F temperature and 30 inches of mercury column pressure. Fuel oil consumption is to be expressed in units of gallons. Also install one or more instruments which measure, as appropriate, and with an error no greater than ±1 percent, the rate of electrical energy, natural gas, propane or fuel oil consumption by a water heater. The rate of electrical energy consumption shall be expressed in units of kilowatts. The rate of natural gas and propane consumption shall be expressed in units of standard cubic feet per hour. The rate of fuel oil consumption shall be expressed in units of gallons per hour. The fuel or energy shall be measured during the draw test and the recovery, Q1, expressed in Btu; while in the standby mode, Q2, expressed in Btu and the total for the 24 hour simulated use test is Q3, expressed in Btu.

2.8 Room Ambient Temperature

Maintain the ambient air temperature of the test room between 65 °F and 70 °F at all times during the test, as measured according to section 3.5.

2.9 Room Ambient Relative Humidity

For heat pump water heaters only, maintain the ambient relative humidity at 50% ±3% during the test. Use care to ensure that the water heater tank is not placed where drafts or air currents will be excessive and thereby increase the standby losses of the tank above normal.

3. Test Procedures and Measurements

3.0 Suggested Test Sequence

It is suggested that the testing sequence be conducted in the following order to minimize testing time:

3.0.1 Determine the tank volume, if applicable, as described in section 3.1.

3.0.2 Install the water heater piping, flue and instrumentation as described in sections, as applicable, 2.1; 2.2; 2.3; 2.4; and 2.5.

3.0.3 Set the thermostat and/or discharge water temperature as appropriate and as described in section 2.6.

3.0.4 Provide for fuel or energy consumption measurement as appropriate and as described in section 2.7.

3.0.5 Control ambient conditions as appropriate and as described in section 2.8 and 2.9.

3.0.6 Make the power input determination as described in sections 3.2 and 4.1.14.

3.0.7 Conduct the first hour rating test and calculations as described in section 3.6; 4.1.1; 4.1.2 or 4.1.3 as appropriate.

3.0.8 Based upon the value of, F as determined in 3.0.7, select the appropriate value of U from table 1.

3.0.9 Based upon the value of U from table 1 select the appropriate draw schedule from table 1 and conduct the recovery efficiency test as described in sections 3.3 and 4.1.9.

3.0.10 Determine the flow rate during a draw as described in section 4.1.13.

3.0.11 After the draw test is complete and the recovery is complete and a thermal equilibrium is achieved as described in section 3.3.1, take all appropriate temperature, time and energy readings and allow the water heater to remain in the standby mode until exactly 24 hours have elapsed from the start of the draw test. At this conclusion of the standby portion of the simulated use test take all appropriate temperature, time and energy readings.

3.0.12 Calculate the daily water heating energy consumption as described in sections 4.1.15.

3.0.13 Calculate the daily hot water energy consumption as described in section 4.1.12.

3.0.14 Calculate the energy factor as described in section 4.1.16.

3.0.15 Calculate the recovery rate as described in section 4.1.17.

3.1 Tank Storage Capacity

Determine the storage capacity, V, of the water heater under test, in gallons, by determining the tare of the empty tank and subtracting this tare from the gross weight of a full tank of water at 58 °F with all air eliminated, with line pressure applied as described in section 2.3 and dividing the net pounds of water by 8.33 pounds per gallon, the density of water at 58 °F. The resulting quotient is the tank capacity, in gallons.

3.1.1 Tank Storage Capacity for Heat Pump Water Heaters Without Tank Supplied by Manufacturer

The tank to be used for testing heat pump water heaters, without tank supplied by the manufacturer, shall have a capacity, as determined in section 3.1, of 47.0 gallons, plus 1.0 gallon, minus zero gallon and have a standby loss of 0.009 ±0.0005 per hour.

3.2 Power Input Determination

3.2.1 Power input determination for all types of water heaters. Initiate normal operation of the water heater, and by using the appropriate instrumentation specified in section 2.7 and the appropriate fuel heating values of section 2.4, determine the power input, P, to the main burners (including pilot light power, if any) or heating elements of the water heater under test, in Btu per hour or kilowatts, as appropriate. Meter fuel input of gas fueled burners following a 15 minute preheat period.

3.3 Recovery Efficiency

3.3.1 Recovery efficiency for all types of storage water heaters. With the water heater turned off, fill the tank with supply water and eliminate any air from the tank and then apply pressure as described in section 2.3. Turn on the water heater and run until cutout occurs at 135 °F ±5 °F as specified in section 2.6.1. It is not required to measure the energy used during this recovery. After cut-out occurs measure the mean tank temperature using the thermocouples described in section 2.5 every minute until thermal equilibrium is achieved (i.e., no change in successive mean tank temperatures). Record the time, mean tank temperature, oil or gas energy measurements, as appropriate, and the electrical energy meter reading (if any electrical energy is used by the water heater under test convert to the Btu equivalent) and begin the draw test by drawing water out of the water heater as described in table 1. All draws during the simulated use test are to be made at flow rates of 3.0 ±0.25 gallons per minute. During the draws, measure the water temperature of the outlet and inlet water using the thermocouples described in section 2.5 at the end of the first minute of the draw and every subsequent whole minute since the draw started and take the arithmetic mean of the hot water discharge and the cold water inlet. Subtract the mean water inlet temperature from the mean water outlet temperature and multiply this difference by

the amount of the draw of hot water, in gallons, by 8.25 the specific heat of water expressed in Btu per gallon degree F. The resulting product is the heat supplied to the water for that specific draw of hot water. Add the energy for all of the draws and recoveries plus the term to account for the energy difference in the mean tank water temperature at the start of the simulated use test from the mean tank water temperature at the end of the last draw and recovery at end of the draw test. This term to account for the energy difference is the product of the mean tank water temperature at the end of the draw test and recovery, minus the mean tank water temperature at the start of the simulated test, the specific heat of water, expressed as 8.25 Btu per gallon degree F and the volume of the tank, expressed in gallons as determined in section 3.1. Divide the sum of all of the preceeding energy terms, expressed in Btu by the total energy, Q1, expressed in Btu, used during the draw test expressed in Btu, required for the water heater to effect the heating of the total amount of hot water drawn off. The quotient is the recovery efficiency expressed as a decimal without units.

3.3.2 Recovery efficiency for all types of instantaneous water heaters. With the water heater turned off, fill the instantaneous water heater with supply water and eliminate any air from the lines and water heater then apply pressure as described in section 2.3. With the thermostat set as described in section 2.6.2 initiate normal operation of the water heater with a flow rate of 3.0 ±0.25 gallons per minute, or as adjusted and described in section 2.6.2, during the prescribed draw schedule in table 1 while measuring the inlet and outlet water temperature every minute and taking the mean values as described in section 2.6.2. Record the energy used, Q1, expressed in Btu, used during the draw test converting electrical energy, Z, to Btu, if necessary, the amount of the total draws, in gallons, U, as defined in table 1. Subtract the mean inlet (supply) water temperature from the mean outlet (discharge) water temperature and multiply this quantity, T1, by the total amount of the draws, U, as defined in Table 1 and multiply by the nominal specific heat of water, 8.25 Btu per gallon degree F and divide by the total energy, Q1, used during the draw test. The resultant is the recovery efficiency, Er, expressed as a decimal without units.

3.4 Room Temperature Measurement

Room temperature wherever specified shall be the temperature determined by using the test room thermocouple described in section 2.5.

3.5 Mean Tank Temperature Measurement

Mean tank temperature, the average temperature of the water in a water heater tank, wherever specified shall be the mean of the temperatures determined by using the six water heater tank thermocouples described in section 2.5.

3.6 First Hour Rating Water Draw Test For All Water Heaters

Establish normal water heater operation with the maximum mean tank temperature within the range specified in section 2.6 and with all air eliminated from the water heater tank. Begin the first hour rating water draw test after thermal equilibrium is achieved as described in section 3.3.1 after a cutout by recording the mean hot water outlet water temperature as described in section 3.3.1, recording the time, and begin withdrawing water from the water heater through the hot water outlet at a rate of 5.0±0.25 gallons per minute. Interrupt electrical power to the heating elements or fuel to the main burner of the water heater to prevent their operation during this test. Collect all of the water withdrawn from the water heater during the test in a suitable container for the purpose of determining its weight at the conclusion of the test. Alternatively, a water meter may be used to directly measure the volume of water withdrawn from the water heater. Beginning 15 seconds after the start of the test and at every subsequent 15 second interval throughout the duration of the water draw, record the outlet and inlet water temperatures. For the purposes of this test, the maximum recorded temperature shall be referred to as the initial outlet water temperature, To. Monitor the functioning of the water heater thermostat(s) and record the time that any thermostat cuts in. Continue the withdrawal of water until the outlet water temperature drops to a value 20 °F below the initial water temperature, To, at which time terminate the withdrawal. Determine the weight of the water withdrawn, W, in pounds measured with an error no greater than 2 percent, or the volume of water withdrawn, G, in gallons measured with an error no greater than 2 percent. Determine the arithmetic mean of the outlet water temperature readings recorded, Tom, in degrees F. Determine the arithmetic mean of the inlet (supply) water temperature readings recorded, Ti, in degrees F. Determine the elapsed time of the test prior to a thermostat of the water heater acting to operate a heating element or the main burner, Tc, in hours measured with an error no greater than 1 percent. If a thermostat on the water heater does not act to operate a heating element or the main burner within one hour after the start of the test, the test is to be terminated and Tc expressed as one hour.

4. Calculation of Derived Results From Test Measurements

4.1 In order to compute an energy factor to determine the annual cost of operation of various types of water heaters, the following formulas are used in the order presented.

4.1.1 First Hour Rating for all storage water heaters except heat pump water heaters without a storage tank supplied by the manufacturer. For a gas, oil, electric and for a heat pump water heater with a storage tank supplied by the manufacturer, calculate the first hour rating, F, expressed in gallons and defined as:

$$F=(Wd)(Tom-Ti)/((d)(To-Ti))+(R)(1-Tc)$$

or

$$F=(V2)(Tom-Ti)/(To-Ti)+(R)(1-Tc)$$

where

Wd = weight of the water withdrawn during the first hour rating water draw test determined in accordance with section 3.6 for storage gas, oil, electric and heat pump water heaters with storage tanks supplied by the manufacturer, expressed in pounds

d = 8.25 pounds per gallon the nominal density of water at the nominal mean temperature of the water

Tom = mean of the outlet water temperature measurements made over the period of the first hour rating draw test determined in accordance with section 3.6 for storage gas, oil, electric and heat pump water heaters with storage tanks supplied by the manufacturer, expressed in degrees F.

Ti = the mean inlet water temperature as determined in accordance with section 3.6, expressed in degrees F

To = the maximum recorded water temperature as determined in accordance with section 3.6, expressed in degrees F

R = recovery rate as determined in section 4.1.17, expressed in gallons per hour

Tc = elapsed time from the start of the first hour rating draw test until a thermostat on the water heater acts to operate the water heating process in accordance with section 3.6, expressed in hours

V2 = the volume of water withdrawn during the first hour rating water draw test determined in accordance with section 3.6, expressed in gallons

4.1.2 First hour rating for heat pump water heaters without a storage tank supplied by the manufacturer. For a heat pump water heater without a storage tank supplied by the manufacturer, calculate the first hour rating, F, expressed in gallons and defined as:

$$F=(Wd)(Tom-Ti)/((d)(To-Ti))+(R)(1-Tc)+(0.837)(Vr-47)$$

where

Wd = weight of tbe water withdrawn during the first hour rating draw test determined in accordance with section 3.6, expressed in pounds

d = 8.25 pounds per gallon the nominal density of water at the nominal mean temperature of the water

Tom = mean of the outlet water temperature measurements made over the period of the first hour rating draw test determined in accordance with section 3.6, expressed in degrees F

Ti = the mean inlet water temperature as determined in accordance with section 3.6, expressed in degrees F

To = the maximum recorded water temperature as determined in accordance with section 3.6, expressed in degrees F

R = recovery rate as determined in section 4.1.17, expressed in gallons per hour

Tc = elapsed time from the start of the first hour rating draw test until a thermostat on the water heater acts to operate the water heating process in accordance with section 3.6, expressed in hours

0.837 = nominal relationship between the volume of water withdrawn from an electric storage water heater during the first hour rating water draw test and its rated storage capacity, determined by a linear regression analysis of test data, expressed as a dimensionless quantity

Vr = storage capacity of the storage water beater to which the heat pump water heater without storage tank is to be connected, expressed in gallons

47 = rated storage capacity of the standard test electric storage water heater used for test purposes, expressed in gallons

4.1.3 First hour rating for all instantaneous water heaters. For all instantaneous water heaters the first hour rating, F, expressed in gallons is calculated as:

$F = (R)(R)/300$

where

R = recovery rate as determined in section 4.1.17, expressed in gallons per hour

4.1.4 Gas Correction Factor. The correction factor, Cf, to determine the "standard" gas volume used is calculated where "standard" conditions are at 60F and 30.00 inches Hg (1016 millibars) atmospheric pressure. The partial pressure of the water vapor is determined from tables of vapor pressure of water at various temperatures, by entering the appropriate gas temperature. The other pressures are to be taken from appropriate instrument readings. The correction factor, Cf, is calculated as a dimensionless quantity and is defined as:

$Cf = (17.64)(Pg + Pa + Pwv)/(Tg + 460)$

where

Pg = the gas pressure, expressed in inches Hg. Note: to convert inches of water to inches Hg, multiply by 0.07343

Pa = the atmospheric pressure, expressed in inches Hg. Note: if the pressure is in millibars, then multiply by 0.02953 to convert inches Hg

Pwv = the water vapor pressure, partial, expressed in inches Hg Note: This factor applies only when net test meter is used.

Tg = the temperature of gas, expressed in degrees F.

4.1.5 Energy Used During a Draw Test for Gas-Fired Water Heaters. The energy used during a draw test of a gas-fired water heater, Q1, is calculated where the volume (Vol) of gas used during a test is corrected to standard conditions using Cf and is converted to Btu using the higher heating value of the gas. The energy used during a draw test is defined as:

$Q1 = (Cf)(H)(Vol) + q$

where

Cf = the correction factor as defined in 4.1.4

H = the higher heating value of gas used, expressed in Btu per standard cubic foot

Vol = the volume of gas used during a test as measured by the gas meter, expressed in cubic feet

q = is as calculated in section 4.1.8, expressed in Btu

4.1.6 Energy Used During a Draw Test for Electric and Heat Pump Water Heaters. The energy used during a draw test of electric and/or heat pump water heaters, Q1, is calculated in Btu and is defined as:

$Q1 = (Z)(3,413)$

where

Z = the total electrical energy used during a draw test, expressed in kilowatt hours

3,413 = a constant to convert kwh to Btu.

4.1.7 Energy Used During a Draw Test for Oil-Fired Water Heaters. The energy used during a draw test of an oil-fired water heater, Q1, is calculated in Btu as:

$Q1 = (J)(Wf) + q$

where

J = the heating value of the fuel oil, expressed in Btu/lb

Wf = the weight of the fuel oil consumed during the draw test, expressed in pounds

q = is as calculated in section 4.1.8, expressed in Btu

4.1.8 Auxiliary Energy Used During a Draw Test for All Types of Water Heaters. The auxiliary energy used by all types of water heaters (pumps, motor, fans, etc.), q, during a draw test is calculated in Btu and is defined as:

$q = (Z)(3,413)$

where

Z = is as defined in 4.1.6

3,413 = is as defined in section 4.1.6

4.1.9 Recovery Efficiency. The recovery efficiency, Er, during a draw test, by taking draws in accordance with table 1, is calculated as a dimensionless quantity and is defined as:

$Er = ((k)(U)(T1) + (k)(V1)(Te - Ti))/(Q1)$

where

k = 8.25 Btu/gallon F, the nominal specific heat of water during the temperature range used

U = the total volume of the draws during the draw test, expressed in gallons per day, established as shown in Table 1

T1 = the mean temperature rise of the hot water drawn during the draw test (Tha-Tia) where Tha is calculated in 4.1.10 and Tia is calculated in 4.1.11, expressed in degrees F

V1 = the volume of the storage tank, expressed in gallons

Te = the mean storage tank water temperature at thermal equilibrium at the completion of the recovery after the final draw of the draw test, expressed in degrees F

Ti = the initial mean tank water temperature at the beginning of the simulated use test, expressed in degrees F

Q1 = is as defined in 4.1.5, 4.1.6 or 4.1.7 as appropriate, expressed in Btu

4.1.10 Mean Outlet Hot Water Temperature. The mean value of the outlet hot water temperature, Tha, is calculated in degrees F and is defined as:

$Tha = (t2 + t3 + ...tn)/(n)$

where

t2 = the hot water temperature at the end of the first 15 seconds of the draw, expressed in degrees F

t3 = the hot water temperature after 30 seconds of the draw, expressed in degrees F

tn = the hot water temperature at the start of the nth 15 second interval of the draw, expressed in degrees F

n = the number of discreet 15 second intervals during the draw test

4.1.11 Mean Supply Water Temperature. The mean value of the supply (cold) water temperature, Tia, is calculated in degrees F and is defined as:

$Tia = (t2 + t3 + ...tn)/(n)$

where

t2 = the cold water inlet temperature at the end of the first 15 seconds of the draw, expressed in degrees F

t3 = the cold water inlet temperature at the start of the first 30 seconds of the draw, expressed in degrees F

tn = the cold water inlet temperature at the start of the nth 15 second interval of the draw, expressed in degrees F

n = the number of discreet 15 second intervals during the draw test

4.1.12 Daily Water Heating Energy Consumption. The total daily water heating energy consumption, Cy, of all types of water heaters expressed in Btu per day and using an established daily hot water usage, U, as defined in table 1, is calculated with a twenty four hour simulated use test and is defined as:

$Cy = Q3 - (k)(V1)(Tf - Ti)/(Er)$

where

Q3 = the total of all energy used during the 24 hour simulated use test, note that Q3 is the sum of Q1, the energy used during the draw test, and Q2, the energy used during the remaining time while the water heater is in the standby mode, expressed in Btu

k = is as defined in 4.1.9

V1 = the volume of the storage tank, expressed in gallons

Tf = the final mean tank temperature at the end of the 24 hour simulated use test, expressed in degrees F

Ti = the initial mean tank temperature at the beginning of the simulated use test, expressed in degrees F

Er = the recovery efficiency as determined by 4.1.9.

4.1.13 The Flow Rate During a Draw. The flow rate of hot water during a draw, Fr, in gallons per minute, is calculated by weighing the water from a draw and timing the draw and is defined as:

$Fr = Ww/((Td)(8.25))$

where

Ww = the weight of the water during the draw, expressed in pounds

Td = the duration of the draw, expressed in minutes

8.25 = is a constant to convert pounds of water to gallons of water.

4.1.14 Power or Firing Rate Determination. The average input power, P, in Btu per hour, for a given test is calculated and is defined as:

$P = (60\ min/hour)(Q1)/(Tb)$

where

Q1 = is as defined in 4.1.5; 4.1.6 or 4.1.7 as appropriate, expressed in Btu

Tb = the duration of the burner or heating element or compressor on time, expressed in minutes

60 = is a constant to convert minutes to hours.

4.1.15 Daily Hot Water Energy Consumption. The daily hot water energy consumption, Cc, is calculated in Btu per day and is defined as:

$Cc = (k)(U)(T1)$

where

k = is as defined in 4.1.9

U = is as defined in 4.1.9

T1=is as calculated in 4.1.9

4.1.16 Energy Factor. The energy factor, EF, is calculated as a dimensionless quantity and is defined as:

EF=(Cc)/(Cy)

where
Cc=is as calculated in 4.1.15
Cy=is as calculated in 4.1.12.

4.1.17 Recovery Rate. Recovery rate, R, for all types of water heater is calculated in gallons per hour and is defined as:

R=(P)(Er)/((k)(T1))

where
P=is as calculated in 4.1.14
Er=is as calculated in 4.1.9
k=is as defined in 4.1.9
T1=is as calculated in 4.1.9

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TABLE 1

F	U	Draw Schedules: Times and Amounts						
First hour rating, F, for all gas, electric and heat pump water heaters as determined by test in section 4.1.1; 4.1.2 or 4.1.3 as appropriate	Assigned value for U* expressed in gal/day	Draw number	1	2	3	4	5	6
		Time from start of test, hours	0	1	2	3	4	5
		Amount of draw as a percent of U#	Cumulative percents					
			16.7	33.3	50.0	66.7	83.3	100.0
Up to 40 gallons	20	Amount of draw in gallons #	Cumulative amounts of draws					
			3.3	6.7	10.0	13.3	16.7	20.0
Over 40 but less than 55 gallons	40	Amount of draw in gallons #	Cumulative amounts of draws					
			6.7	13.3	20.0	26.7	33.3	40.0
Over 55 but less than 80 gallons	60	Amount of draw in gallons #	Cumulative amounts of draws					
			10.0	20.0	30.0	40.0	50.0	60.0
Over 80 gallons	80	Amount of draw in gallons #	Cumulative amounts of draws					
			13.3	26.7	40.0	53.3	66.7	80.0

NOTES: *For all oil-fired water heaters U is assigned to be 60 gallons/day.

#Amounts shown are cumulative, all draws are equal.

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federal register

Friday
March 13, 1987

Part III

Department of Agriculture

Farmers Home Administration

7 CFR Parts 1806, 1822, 1901, 1924, 1930, 1933, 1940, 1942, 1943, 1944, 1945, and 1955

Provisions for Planning and Performing Construction and Other Development; Final Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1806, 1822, 1901, 1924, 1930, 1933, 1940, 1942, 1943, 1944, 1945, and 1955

Provisions for Planning and Performing Construction and Other Development

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation for planning and performing construction and other development work. This action is being taken to change the basic structure of FmHA's development standards for single and multiple family housing, to require certification of plans and specifications and to reference guides which address liveability, marketability and construction practice concerns. Other revisions add comparative classifications for rehabilitation of multiple family housing; consolidate and clarify criteria and procedures for determining the acceptability of insured 10-year home warranties for new single family homes financed by FmHA, add definitions of modular/panelized housing and manufactured housing; and add options for meeting builder surety requirements.

The change in development standards implements FmHA's authority to determine and prescribe standards for adequate housing under section 509(a) of the Housing Act of 1949, as amended by the Housing Urban-Rural Recovery Act of 1983, Pub. L. 98–181. The intended effect is to comply with Pub. L. 98–181 and provide affordable housing to eligible families in rural areas according to development standards which are generally acceptable to the public and the building industry and which protect the safety and health of the occupants.

EFFECTIVE DATE: May 12, 1987.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Single Family Housing Loan Specialist, Telephone: 202–382–1489, regarding single family housing requirements; Keith A. Suerdick, Architect, Telephone: 202–382–9651, regarding technical requirements; and Karen King, Multiple Family Housing Loan Specialist, Telephone: 202–382–1620, regarding multiple family housing requirements.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been classified as "nonmajor." This action will result in an annual effect on the economy of less than $100 million and will neither result in a major increase in cost or prices, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. There is no impact on proposed budget levels, and funding allocations will not be affected because of this action.

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

The FmHA programs which are listed in the Catalog of Federal Domestic Assistance under numbers 10.405—Farm Labor Housing Loans and Grants; 10.411—Rural Housing Site Loans; 10.415—Rural Rental Housing Loans; 10.416—Soil and Water Loans; 10.420—Rural Self-Help Housing Technical Assistance are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials (7 CFR 3015, Subpart v, 48 FR 29112, June 24, 1983).

Emergency Loans—10.404; Farm Ownership Loans—10.407; Very Low and Low Income Housing Loans—10.410; Very Low Income Housing Repair Loans and Grants—10.417 are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

References to the forms related to this regulation have been revised to reflect their renumbering to the 1924 series, which corresponds to the CFR reference numbers, and several other minor and editorial changes have been made.

The implementation of other development standards to replace FmHA's present: Minimum Property Standards (MPS) and the renumbering of related forms has necessitated amendments to several Parts of Chapter XVIII, Title 7, Code of Federal Regulations. These amendments consist of conforming changes and cross references in numerous FmHA loanmaking and loan servicing regulations since development standards are relied on in several FmHA decisionmaking processes. All FmHA regulations that refer to MPS are amended to refer to an applicable development standard. In addition, we have added a reference to noise abatement procedures in Subpart C of Part 1940 of this chapter to assure compliance with the Noise Abatement and Control Act. These changes are addressed in the final rule publication, but were not included in the proposed rule since they were only administrative in nature.

The addition of comparative classifications for multiple family housing rehabilitation is to assure that buildings rehabilitated or repaired will meet levels of quality or performance comparable to those prescribed by the Secretary of HUD.

The criteria and procedures for determining the acceptability of insured 10-year home warranties were located in several different sections of the regulation and required clarification and consolidation. The intended effect of the revision is to simplify and shorten the approval process.

Revised definitions of modular/panelized housing and manufactured housing are in § 1924.4 (k) and (mn).

Options for builder surety requirements are in § 1924.6(a)(3).

Discussion of Comments

A proposed rule was published in the **Federal Register** (51 FR 9014) on March 17, 1986, and invited comments for 60 days ending May 16, 1986.

Twenty-four comments were received from builders, non-profit housing organizations, trade associations, legal services organizations, state community development agencies, F?HA employees and other individuals addressing numerous aspects of the regulation, some of which were not proposed to be revised. The following summarizes the comments and the actions taken.

A. Revision of Development Standards

Numerous comments were received on the primary purpose of this revision, acceptance of national model building codes as FmHA minimum development standards. Most comments were favorable, stressing the benefits of uniformity of standards, cost effectiveness, encouragement of new housing technology, streamlining the preconstruction approval process and making new housing more accessible to lower income families. Three commenters, however, expressed concerns that the change would result in housing of poor appearance and quality and, therefore, be less acceptable to the community. This agency is concerned with maintaining the quality and appearance of our housing loan portfolio

and, therefore, provides design guides to assist field personnel in evaluating certain housing characteristics during the underwriting process. We believe with less government regulation, the housing consumer will have a direct influence on what is available in the housing market and will influence it favorably toward lower costs and improved housing design.

One commenter requested clarification of the development standards since the proposed rule did not clearly identify the types of codes that must be included in the development standards. Section 1924.5(d)(1)(i)(E) has been revised for clarification.

B. Insured 10-Year Warranties

There was a request for clarification of our provisions for insured 10-year warranties with respect to the procedures for requesting partial payments when construction inspection reports are not available and with respect to our conditional acceptance of risk retention groups as 10-year warranty insurers under the Product Liability Risk Retention Act. Sections 1924.6(a)(12)(v)(B) and 1924.9(b)(3)(i) have been revised to clarify the relationship between requests for partial payments and inspections of development work covered by a 10-year warranty. We have determined to retain the language concerning our right to reconsider our recognition of any group claiming authority as a risk retention group if such authority is ever challenged by a state insurance commission or other regulatory agency. We do not believe this language unfairly prejudices acceptance of such warranties in the field. We do not intend to imply that they are not authorized, we simply note that there are still questions which, if raised, may necessitate reconsideration. We have added a statement to this effect. In addition, we have added a new § 1924.12, entitled "Warranty of Development Work," and incorporated pertinent information previously in § 1924.9(d), "Warranty Period."

C. Certification of Plans and Specifications

Several comments were received concerning plan certification. One commenter requested clarification as to when certification documents are required. Another commenter believed the rule should be amended to allow approval of plans where they have been certified and are being resubmitted by the same builder. One commenter felt certification may be burdensome for applicants, due to an absence of architects, engineers or code officials in rural areas. Finally, one commenter opposed imposing independent certification requirements on the builder, but suggested that self-certification be used if deemed necessary. The agency has determined that the retention of the certification requirement is necessary to protect its interest in providing decent, safe and sanitary housing and that procedures for certification are readily available even in the most rural areas. The final rule has been clarified to require certification of the final plans only. Recertification is not required for resubmitted plans that have not been modified. Any modifications, however, must be certified. Certification of modifications to single family housing plans which do not affect code compliance may be waived by the FmHA County Supervisor if the builder provides FmHA a written statement that the modification is not regulated by the applicable development standards. Certification by an in-house architect/engineer or by the architect who prepared the plans is acceptable. See § 1924.5(f)(1)(iii).

D. Reference to Other Codes or Standards

One commenter suggested that the National Standard Plumbing Code be included as one of the voluntary national model building codes. Even though the National Standard Plumbing Code is used by many jurisdictions and organizations throughout the country, it is not directly referenced or adopted by an association of building officials, which was the basic criteria used in the President's Commission on Housing Report in 1982 to identify a national model building code. This criteria has been included in the final rule. Changes were made to § 1924.4(h)(2) and Exhibit E. It was pointed out by one commenter that to completely eliminate all references to the minimum property standards would not ensure that FmHA financed construction would neet acceptable levels of quality, safety and durability because these standards are not included in the model building codes. We agree with the commenter and are referencing appendices C and F of HUD Handbook 4910.1, Minimum Property Standards for Housing, in the final rule to ensure the continued durability of products which are likely to be used in FmHA-financed construction. This change appears in § 1924.5(d)(1).

E. Thermal Performance Construction Standards

One commenter recommended revising Note 2 in Exhibit D, paragraph IV.A. to allow nonuniform installation of ceiling insulation as long as the maximum U-value for the ceiling assembly is met. This commenter referred to low pitch roof construction where uniform distribution of insulation is hampered by roof geometry. FmHA does allow compression of ceiling insulation at the outside building walls to allow for a 1-inch ventilation space under the roof sheathing. Additional compression is permitted if the overall U-value of the ceiling assembly meets the standards in Exhibit D. We have clarified Note 2 in the final rule to require insulation to be continuous above all ceiling joists such that there are no gaps in insulation above these joists. Another commenter recommended requiring lower infiltration rates for windows and doors due to recent improvements in the infiltration rates of these products. We agree that the infiltration properties of windows and doors has improved recently, however, further study is needed to determine what maximum infiltration rate should be allowed. We are gathering information on this subject. It was noted that paragraph IV.D.3.b. of Exhibit D, published previously in 45 FR 39789 (June 12, 1980), was inadvertently omitted from the text of the proposed rule. We have included this paragraph in the final rule document.

F. Lead-Based Paint Hazards

One commenter raised the issue of the need for updating the "Prohibition of Lead-Based Paint," Exhibit H to this Subpart. We agree that this exhibit, first issued in 1974, must be updated because recent experiences and research indicates that potential hazard areas and mitigation methods have changed. The Department of Housing and Urban Development (HUD) issued its final rule on Lead-Based Paint Hazard Elimination on August 1, 1986. FmHA will update its regulations on the elimination of lead-based paint hazards in rural areas accordingly at the earliest opportunity. We have; however, clarified that the applicable warnings should be given to applicants, borrowers or tenants.

G. Exception to Competitive Bidding

Comments were received objecting to the requirement in § 1924.13(e)(1)(vii) that costs must be comparable to other similar projects in the area which were competitively bid. This is difficult when Section 515 projects are built in areas in which there are no comparable competitively bid projects. The commenters felt that competitive bidding does not always lead to less

expensive projects and in fact, may result in more expensive projects, therefore, past experience of the contractor should be grounds upon which to permit a negotiated contract. The Agency has considered the comments and agrees. We have changed § 1924.13(e)(1)(vii)(A)(*1*) to state: "An applicant may negotiate a construction contract provided the State Director grants an exception and documentation shows that:

(1) The contract price is competitive with other projects similar in construction and design built in the area."

The wording "under contracts which have been competitively bid" has been eliminated. In effect, exceptions to competitive bidding may be granted to nonprofit organizations and public bodies provided all the requirements of § 1924.13(e)(1)(vii) are met.

H. Cost Certification and Audit Requirements

Comments were received objecting to cost certifying as costly and time consuming. The commenters felt that if the State Director can justify the cost of an owner-builder project and it is comparable in cost to publicly bid projects, cost certification should not be required. The Agency does not deem it appropriate to eliminate the cost certification requirement for projects involving an identity of interest. In such instances we have found cost certification to be an extremely valuable tool in the determination of actual cost of construction.

Comments were received regarding § 1924.13(e)(1)(v)(D) which requires that the CPA or LPA determine that "the actual cost of construction performed under the contract is accurate and correct." The commenters felt that this was inappropriate for a CPA who is neither an architect nor an engineer and unfamiliar with the actual costs of such materials and activities. Further, requiring the CPA or LPA to determine that costs are "accurate and correct," requires additional time and work to complete a project. The commenters recommended that, if necessary, they would suggest using such language as "fairly represent cost of construction" instead. The Agency has considered all comments pertinent to this issue and has revised the rule to afford the CPA or LPA the professional latitude necessary to cost certify respective project costs without violating the CPA code of ethics.

I. Partial Payments, Contract Retainage and FmHA Approval of Payments by Interim Lenders

Comments were received suggesting that the Agency reduce the required amount of payment retention to 5 percent or that we induce prompt payment by eliminating payment retention. The Agency does not concur with these recommendations because they would increase the borrower's financial exposure during the construction period and minimize the borrower's and the Agency's assurance that sufficient funds will be available to complete construction in the event of contractor default. These construction contracts are not subject to Federal Procurement Regulations.

A comment was received questioning why owner-builders are allowed to draw 90 percent without precautions. The Agency takes the position that we treat owner-builders the same as any other builder where the release of partial payments is concerned.

A comment was received recommending that the Agency permit no exceptions to surety requirements. The Agency's position is that the State Director needs the latitude and the provisions under which to accept a contractor who cannot obtain a payment and performance bond when it is in the best financial interest of the borrower and the government. In such instances, surety of another type is required.

J. Plant Inspections—Modular/ Panelized Housing Units

Two commenters requested clarification of FmHA requirements for periodic inspections of plant facilities for modular/panelized housing units. There appeared to be a discrepancy between the language in § 1924.8(e) and that in Exhibit B to this subpart. Section 1924.8(e) has been revised to clarify that plant inspections will be performed in accordance with paragraphs II and III of Exhibit B. We do accept plant inspections by HUD or a HUD authorized agency in Category III states; however, some panelized units do not require HUD factory inspections, and FmHA employees should inspect off-site assembly, as necessary, to determine the performance and stability of materials and construction.

K. Other Comments

One comment was received suggesting that owner-builder projects are difficult to administer to protect the interest of the government, and, therefore, the owner-builder should deposit 5 percent in an interest bearing escrow to help defray costs of the one-year guarantee. The Agency has considered this proposal and is not incorporating it. The suggested 5 percent deposit seems arbitrary. Furthermore, even though not explicitly required in our regulations, the owner-builder will normally insist that all work and materials by suppliers and contractors be warranted for one year.

One commenter was concerned that additional guidelines for seasonal farm labor housing were necessary. In northern states, heating is a major concern even in the summer months and the commenter felt that adequate heating was seldom available. Residents use make-shift heating sources which create a potential health and safety hazard. The commenter suggested that a standard be developed based on heating degree days similar to the ratios used in determining need for weatherization in Exhibit D. This would insure adequate safe heating units. The Agency has considered this proposal and finds that Section 303–7 of Exhibit I requires the thermal performance of seasonal farm labor housing to comply with Exhibit D, paragraph IV, C. 3. Compliance with this standard should prevent tenants from being forced to install unsafe heating devices.

One commenter felt that confusion exists between the use of FmHA forms and AIA forms prescribed in Guide 1 and questioned why there are two different sets of documents. The Agency's position is that projects that are small in magnitude and complexity, such as single family housing and small rural rental housing projects, do not require the same degree of detail in the contracts needed for larger projects, therefore; using the same contract forms is neither logical nor efficient. Section 1924.6(a)(1) is revised to indicate that Form FmHA 1924–6 is the only acceptable contract form for single family housing.

One commenter suggested that a full-time project representative should not be required for small projects and that, if required, should be an authorized use of loan funds. The requirement for a project representative is currently at the discretion of the State Director and has seldom been imposed. The cost of this service is eligible for inclusion in the total project cost.

One commenter stated that at the eleventh month of the warranty phase, the architect is to make an inspection with FmHA. The commenter felt that this inspection should be free of charge if there has been a mistake made by the architect. The Agency's position is that the warranty phase service by the architect is required and thus eligible for

reimbursement regardless of whether there are any deficiencies or not. The deferral or retainage of payments to the architect by the owner for alleged or actual error or negligence should be considered a separate issue and action.

One commenter suggested that using a percentage to determine builders' profit is a strong disincentive to save costs. Under this method, a builder is actually financially penalized if a project comes in under cost. The commenter suggested that an incentive system to save costs be developed. The Agency's position is that if an owner-builder is allowed to increase his/her profit if the costs come in low, then the final development costs remain the same. Rent schedules, therefore, would not be reduced for the tenants who are supposed to be the real beneficiaries of this program.

It was stated by one commenter that architects' errors and omission liability does not allow them to certify inspections on requests for payment to contractors as required on FmHA Form 1924–18. FmHA Instruction 1924–A, Guide 1 allows the use of AIA document G702–1978 for partial payments. This form has slightly different wording acceptable to FmHA. Either form may be used for partial payment requests.

A commenter suggested that FmHA not specify scales to be used on drawings, and recommended the use of folded 11" x 17" sheets. A minimum scale for certain drawings insures that drawings are readable and that sufficient detail can be shown. If documents were reduced in size, information and detail could be lost. The Agency does not feel that folded 11" x 17" sheets can be required or recommended.

A suggestion to revise Form FmHA 1924–2 (FHA 2005 and VA 26–1852), "Description of Materials," was received from one commenter. This form is used by all three agencies, and revisions require agreement by all three agencies. To date, discussions have been held, but no firm date is known for revising these forms.

One commenter felt FmHA should concur in construction contracts rather than approve them, since FmHA is not a party to the contract. Section 1924.13(e)(1)(ii) (A) and (H) has been reworded to reflect this comment.

The time for retaining file copies of plans and specifications in § 1924.5(f)(1)(ii) was felt to be too short by one commenter. The time requirement has been adjusted and relocated to § 1924.5(f)(2)(xiii) to provide for returning plans and specifications after the warranty phase is completed.

The proposed rule does not require the architect to attend a preconstruction conference. Section 1924.13(a)(5)(v)(A) has been revised to include this requirement. Section 1924.13(e)(1)(vi) concerning partial payments needed to be revised to delete reference to an "FmHA approved" contract, and to the "reverse" side of Form FmHA 1924–18, which no longer contains information. Likewise, § 1924.13(e)(2)(ix) has been revised to include language contained in the revised Form FmHA 1924–18.

One commenter requested clarification of § 1924.5(d)(3) which made reference to borrowers' payment for technical services, and another was concerned that the procedure for materials acceptance was not referenced in the body of the instruction. We have determined that the contents of § 1924.5(d)(3) should be deleted since the issue is adequately and more appropriately addressed in program regulations and we have placed in that paragraph, as appropriately located, a reference to the materials acceptance procedure described in paragraph XI of Exhibit B of Subpart A of Part 1924.

One commenter, with specific reference to § 1924.6 (a) which states ". . . (Conditional commitment construction is not covered under this paragraph) . . .", suggested numerous changes to assure that conditional commitment construction is adequately addressed in this instruction. We recognize such a revision would be beneficial and have made some minor revisions; however, since this aspect of the instruction was not revised for the proposed rule, it would entail numerous additional changes in related program instructions and, if changed for the final rule, would effectively eliminate the public's opportunity to comment on considered alternative proposed actions, we have decided to address this comment in a separate proposed rule making at a future date.

One commenter expressed concern with language in § 1924.6(a)(1) regarding the use of construction contracts which "are customarily used in the area . . ." We concur that this may be somewhat confusing to applicants who may not be aware of what is customary and, therefore, be at a disadvantage during contract negotiation; therefore, we have made revisions to require the use of Form FmHA 1924–6, Construction Contract, for single family housing construction, to assure that all FmHA contract requirements are met and to assure protection of the interests of the borrower.

Exhibit A was revised in the proposed rule to reflect more accurate estimated percentages of total construction costs for single family structures with different types of foundations. The estimates are based on cost data obtained from the Residential/Light Commercial Cost Data Handbook, published by Robert Snow Means Company, Inc. One commenter was concerned that it was not clearly indicated that these were estimated percentages and that actual figures could vary according to differing construction methods or practices. Although it is clearly indicated in § 1924.6(a)(12)(v)(C) that Exhibit A is a guide, we have revised the title of Exhibit A to "Estimated Breakdown of Dwelling Costs For Estimating Partial Payments."

Exhibit E, Preconstruction Conference, did not adequately address all the items which should be covered in a preconstruction conference, nor did it take into consideration deletions or additions which may be necessary for different types or levels of complexity of construction methods, therefore, it has been eliminated. [Exhibit E now lists the Voluntary National Model Building Codes.] Form FmHA 1924–16, "Record of Preconstruction Conference," may be used as a guide for an agenda. Section 1924.6(a)(11)(i) has been revised to clarify that the purpose of the preconstruction conference is to review each party's responsibilities under the terms and conditions of the contract documents and the loan agreement during the construction and warranty periods.

Finally, the Agency received several comments of an editorial nature. We have evaluated these comments and have made changes in the Final Rule as appropriate.

Typographical errors noted in the Proposed Rule have been corrected.

We have determined it to be unnecessary to republish certain illustrations, Attachments 1 and 2 of Exhibit C and Figures 1 and 2 and the Roof Overhangs illustration, redesignated as Attachments 1, 2 and 3 to Exhibit D, since they have not been changed, are satisfactory and readable in the current printing and will be available in any FmHA office for public review. References to these illustrations have all been annotated "available in any FmHA office."

List of Subjects in 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

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

PART 1806—INSURANCE

1. The authority citation for Part 1806 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—National Flood Insurance

2. In § 1806.25, the introductory text of paragraph (a)(2) is revised to read as follows:

§ 1806.25 Conditions.

* * * * *

(a) * * *

(2) If the financial assistance is to build or provide substantial improvement, the requirements of paragraph (a)(1) of this section must be met and all construction must meet requirements of the applicable development standards, and:

* * * * *

PART 1822—RURAL HOUSING LOANS AND GRANTS

3. The authority citation for Part 1822 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart B—Section 502 Rural Housing Weatherization Loans

4. In Exhibit A, paragraph D is revised to read as follows:

Exhibit A—Cooperative Agreement Between _____ and the Farmers Home Administration

* * * * *

D. Development Standards. Weatherization improvements must meet the applicable development standards as required by § 1924.5(d) of Subpart A of Part 1924 of this chapter or standards established by the utility, whichever are greater. All improvements to the property will conform to applicable laws, ordinances, codes and regulations which relate to the safety and the sanitary features of the dwelling.

* * * * *

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

5. In § 1822.267, introductory text of paragraph (l)(2) is amended in the last sentence by changing the form number from "444–11" to "1944–11."

PART 1901—PROGRAM RELATED INSTRUCTIONS

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

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

Subpart E—Civil Rights Compliance Requirements

7. In § 1901.205, paragraphs (b)(1), (b)(2)(i), (b)(3)(ii) and (e)(2) are amended by changing the numbers of Forms FmHA 424–5, 424–6, 424–12 and 424–21 to Forms FmHA 1924–5, 1924–6, 1924–12 and 1924–21, respectively.

8. In § 1901.205, paragraph (b)(3)(iv) is amended by changing the words "10 days" to "10 calendar days."

9. Exhibit C is revised to read as follows:

Exhibit C—FmHA Financed Contract

To: Area Director, Office of Federal Contract Compliance Program, U.S. Department of Labor (DOL) (Insert address for your DOL area, from Exhibit E, FmHA Instruction 1901–E)

We submit the following information relative to a construction contract in excess of $10,000:

1. Contractor's name: _____
Address: _____
Telephone Number: _____
Employer's Identification Number: _____
2. Contract for: ____ $_____
Starting Date: _____
Completion Date: _____
Contract Number: _____
City: _____
DOL Region: _____

PART 1924—CONSTRUCTION AND REPAIR

10. The authority citation for Part 1924 is revised to read as follows:

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

Subpart A—Planning and Performing Construction and Other Development

11. In Subpart A §§ 1924.1–1924.50, and Exhibits A–I, and K and L are revised to read as follows:

Subpart A—Planning and Performing Construction and Other Development

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PART 1924—CONSTRUCTION AND REPAIR

Subpart A—Planning and Performing Construction and Other Development

§ 1924.1 Purpose.

This subpart prescribes the basic Farmers Home Administration (FmHA) policies, methods, and responsibilities in the planning and performing of construction and other development work for insured Rural Housing (RH), insured Farm Ownership (FO), Soil and Water (SW), single unit Labor Housing (LH), Recreation (RL), and Emergency (EM) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, multiunit (LH) loans and grants, and Rural Housing Site (RHS) loans.

§ 1924.2 [Reserved]

§ 1924.3 Authorities and responsibilities.

The County Supervisor and District Director are authorized to redelegate, in writing, any authority delegated to them in this subpart to the Assistant County Supervisor and Assistant District Director, respectively, when determined to be qualified. FmHA Construction Inspectors, District Loan Assistants, and County Office Assistants are authorized to perform duties under this subpart as authorized in their job descriptions.

§ 1924.4 Definitions.

(a) *Construction.* Such work as erecting, repairing, remodeling, relocating, adding to or salvaging any building or structure, and the installation or repair of, or addition to, heating and electrical systems, water systems, sewage disposal systems,

walks, steps, driveways, and landscaping.

(b) *Contract documents.* The borrower-contractor agreement, the conditions of the contract (general, supplementary, and other), the drawings, specifications, warranty information, all addenda issued before executing the contract, all approved modifications thereto, and any other items stipulated as being included in the contract documents.

(c) *Contractor.* The individual or organization with whom the borrower enters into a contract for construction or land development, or both.

(d) *County Supervisor and District Director.* In Alaska, for the purpose of this subpart, "County Supervisor" and "District Director" also mean "Assistant Area Loan Specialist" and "Area Loan Specialist," respectively. The terms also include other qualified staff who may be delegated responsibilities under this subpart in accordance with the provisions of Subpart F of Part 2006 (available in any FmHA office).

(e) *Date of commencement of work.* The date established in a "Notice to Proceed" or, in the absence of such notice, the date of the contract or other date as may be established in it or by the parties to it.

(f) *Date of substantial completion.* The date certified by the Project Architect/Engineer or County Supervisor when it is possible, in accordance with any contract documents and applicable State or local codes and ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and/or use of the buildings or other development.

(g) *Development.* Construction and land development.

(h) *Development standards.* Any of the following codes and standards:

(1) A standard adopted by FmHA for each state in accordance with § 1924.5(d)(1)(i)(E) of this subpart.

(2) *Voluntary national model building codes (model codes).* Comprehensive documents created, referenced or published by nationally recognized associations of building officials that regulate the construction, alteration and repair of building, plumbing, mechanical and electrical systems. These codes are listed in Exhibit E of this subpart.

(3) *Minimum Property Standards (MPS).* The Department of Housing and Urban Development (HUD) Minimum Property Standards for Housing, Handbook 4910.1, 1984 Edition with Changes. (For One and Two Family Dwellings and Multi-Family Housing).

(i) *Identity of interest.* Identity of interest will be construed as existing between the applicant (the party of the first part) and general contractors, architects, engineers, attorneys, subcontractors, material suppliers, or equipment lessors (parties of the second part) under any of the following conditions:

(1) When there is any financial interest of the party of the first part in the party of the second part. The providing of normal professional services by architects, engineers, attorneys or accountants with a client-professional relationship shall not constitute an identity of interest.

(2) When one or more of the officers, directors, stockholders or partners of the party of the first part is also an officer, director, stockholder, or partner of the party of the second part.

(3) When any officer, director, stockholder or partner of the party of the first part has any financial interest whatsoever in the party of the second part.

(4) When the party of the second part advances any funds to the party of the first part.

(5) When the party of the second part provides and pays on behalf of the party of the first part the cost of any legal services, architectural services or engineering services other than those of a surveyor, general superintendent, or engineer employed by a general contractor in connection with obligations under the construction contract.

(6) When the party of the second part takes stock or any interest in the party of the first part as part of the consideration to be paid them.

(7) When there exist or come into being any side deals, agreements, contracts or undertakings entered into thereby altering, amending, or cancelling any of the required closing documents except as approved by FmHA.

(j) *Land development.* Includes items such as terracing, clearing, leveling, fencing, drainage and irrigation systems, ponds, forestation, permanent pastures, perennial hay crops, basic soil amendments, pollution abatement and control measures, and other items of land improvement which conserve or permanently enhance productivity. Also, land development for structures includes the applicable items above, and items such as rough and finish grading, retaining walls, water supply and waste disposal facilities, streets, curbs and gutters, sidewalks, entrancewalks, driveways, parking areas, landscaping and other related structures.

(k) *Manufactured housing.* Housing, constructed of one or more factory-built sections, which includes the plumbing, heating and electrical systems contained therein, which is built to comply with the Federal Manufactured Home Construction and Safety Standards (FMHCSS), and which is designed to be used with or without a permanent foundation. Specific requirements for manufactured homes sites, rental projects and subdivisions are in Exhibit J of this subpart.

(l) *Mechanic's and materialmen's liens.* A lien on real property in favor of persons supplying labor and/or materials for the construction for the value of labor and/or materials supplied by them. In some jurisdictions, a mechanic's lien also exists for the value of professional services.

(m) *Modular/panelized housing.* Housing, constructed of one or more factory-built sections, which, when completed, meets or exceeds the requirements of one or more of the recognized development standards for site-built housing, and which is designed to be permanently connected to a site-built foundation.

(n) *Project representative.* The architect's or owner's representative at the construction site who assists in the administration of the construction contract. When required by FmHA, a full-time project representative shall be employed.

(o) *Technical services.* Applicants are responsible for obtaining the services necessary to plan projects including analysis of project design requirements, creation and development of the project design, preparation of drawings, specifications and bidding requirements, and general administration of the construction contract.

(1) Architectural services. The services of a professionally qualified person or organization, duly licensed and qualified in accordance with state law to perform architectural services.

(2) Engineering services. The services of a professionally qualified person or organization, duly licensed and qualified in accordance with State law to perform engineering services.

(p) *Warranty.* A legally enforceable assurance provided by the builder (warrantor) to the owner and the FmHA indicating that the work done and materials supplied conform to those specified in the contract documents and applicable regulations. For the period of the warranty, the warrantor agrees to repair defective workmanship and repair or replace any defective materials at the expense of the warrantor.

§ 1924.5 Planning development work.

(a) *Extent of development.* For an FO loan, the plans for development will include the items necessary to put the

farm in a livable and operable condition consistent with the planned farm and home operations. For other types of loans, the plans will include those items essential to achieve the objectives of the loan or grant as specified in the applicable regulation.

(b) *Funds for development work.* The total cash cost of all planned development will be shown on Form FmHA 1924–1, "Development Plan," except Form FmHA 1924–1 may be omitted when: (1) All development is to be done by the contract method, (2) adequate cost estimates are included in the docket, and (3) the work, including all landscaping, repairs, and site development work, is completely described on the drawings, in the specifications, or in the contract documents. Sufficient funds to pay for the total cash cost of all planned development must be provided at or before loan closing. Funds to be provided may include loan proceeds, any cash to be furnished by the borrower, proceeds from cost sharing programs such as Agricultural Stabilization and Conservation Service (ASCS) and Great Plains programs or proceeds from the sale of property in accordance with paragraph (g) of this section.

(c) *Scheduling of development work.* (1) All construction work included in the development plan for RH loans will be scheduled for completion as quickly as practicable and no later than 9 months from the date of loan closing, except for mutual self-help housing where work may be scheduled for completion within a period of 15 months.

(2) Development for farm program loans will be scheduled for completion as quickly as practicable and no later than 15 months from the date of loan closing unless more time is needed to establish land development practices in the area.

(d) *Construction.* (1) All new buildings to be constructed and all alterations and repairs to buildings will be planned to conform with good construction practices. The FmHA Manual of Acceptable Practices (MAP) Vol. 4930.1 (available in any FmHA office), provides suggestions and illustrative clarifications of design and construction methods which are generally satisfactory in most areas. All improvements to the property will conform to applicable laws, ordinances, codes, and regulations related to the safety and sanitation of buildings; standards referenced in Appendices C and F of HUD Handbook 4910.1, Minimum Property Standards for Housing; Thermal Performance Construction Standards contained in Exhibit D of this subpart and, when required, to certain other development standards described below.

(i) The development standard applicable to a proposal will be selected by the loan applicant or recipient of an RH Conditional Commitment in accordance with the following. The standard selected must:

(A) Relate to the type(s) of building proposed.

(B) Meet or exceed any applicable local or state laws, ordinances, codes and regulations.

(C) Include all referenced codes and standards.

(D) Exclude inapplicable administrative requirements.

(E) Be the current edition(s) of either subparagraph (*1*) or (*2*) below:

(*1*) The development standard, consisting of building, plumbing, mechanical and electrical codes, adopted by FmHA for use in the state (identified in a State Supplement to this section) in which the development is proposed, in accordance with the following:

(*i*) The adopted development standard shall include any building, plumbing, mechanical or electrical code adopted by the State, if determined by the State Director to be based on one of the model codes listed in Exhibit E to this subpart, or, if not available,

(*ii*) The adopted development standard shall include any building, plumbing, mechanical or electrical code adopted by the state, if determined by the Administrator to be acceptable, or, if not available,

(*iii*) The adopted development standard shall include the model building, plumbing, mechanical or electrical code listed in Exhibit E to this subpart that is determined by the State Director to be most prevalent and appropriate for the state.

(*2*) Any of the model building, plumbing, mechanical and electrical codes listed in Exhibit E to this subpart or the standards defined in § 1924.4(h)(3) of this subpart.

(ii) Guide 2, "FmHA Design Guide," of this subpart (available in any FmHA office), includes guidelines for the evaluation of the design features which are not fully addressed in the development standards.

(iii) In new housing, all design, materials and construction will meet or exceed the applicable development standard as provided in paragraph (d)(1)(i) of this section.

(iv) For multi-family residential rehabilitation, as defined in Exhibit K of this subpart, all substantial rehabilitation work on existing buildings will meet or exceed the applicable development standard. All moderate rehabilitation work should comply with Guide 3, "Quality and Performance Criteria for Moderate Rehabilitation," of this subpart (available in any FmHA office).

(v) The design and construction of housing repairs made with FmHA loan or grant funds will, as near as possible, comply with the applicable development standard.

(vi) Farm LH design and construction will comply with the following:

(A) Family projects, where the length of occupancy will be:

(*1*) Year-round, will meet or exceed the applicable development standard.

(*2*) Less than 12 months, but more than 6 months, will be in substantial conformance with the applicable development standard and constructed to facilitate conversion to year-round occupancy standards.

(*3*) Six months or less, may be less than the applicable development standard but should be constructed in accordance with Exhibit I of this subpart.

(B) Dormitory and other nonfamily type projects, where the length of occupancy will be:

(*1*) More than 6 months, will be in substantial conformance with the applicable development standard and will at least meet or exceed the requirements of the Department of Labor, Bureau of Employment Security (29 CFR 1910.140).

(*2*) Six months or less, will comply with § 1924.5(d)(1)(vi)(A)(3).

(vii) Farm service buildings should be designed and constructed for adaptation to the local area. In designing and locating farm service buildings, consideration will be given to practices recommended by agriculture colleges, the Extension Service (ES), Soil Conservation Service (SCS) and other reliable sources.

(2) Drawings, specifications, and estimates will fully describe the work. Technical data, tests, or engineering evaluations may be required to support the design of the development. The "Guide for Drawings and Specifications," Exhibit C of this subpart, describes the drawings and specifications that are to be included in the application for building construction, and § 1804.74 of Subpart D of Part 1804 of this chapter (Exhibit A of FmHA Instruction 424.5) describes the drawings that should be included for development of building sites. The specific development standard being used, if required under paragraph (d)(1) of this section will be identified on all drawings and specifications.

(3) Materials acceptance shall be the same as described in paragraph XI of Exhibit B to this subpart.

(e) *Land development.* (1) In planning land development, consideration will be given to practices, including energy conservation measures, recommended by agricultural colleges, ES, SCS or other reliable sources. All land and water development will conform to applicable laws, ordinances, zoning and other applicable regulations including those related to soil and water conservation and pollution abatement. The County Supervisor or District Director also will encourage the applicant to use any cost-sharing and planning assistance that may be available through agricultural conservation programs.

(2) Site and subdivision planning and development should also be guided by the requirements of Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5).

(3) Plans and descriptive material will fully describe the work.

(4) The site planning design, development, installation and set-up of manufactured home sites, rental projects and subdivisions shall be guided by Exhibit J of this subpart.

(i) Plans for land leveling, irrigation, or drainage should include a map of the area to be improved showing the existing conditions with respect to soil, topography, elevations, depth of topsoil, kind of subsoil, and natural drainage, together with the proposed land development.

(ii) When land development consists of, or includes, the conservation and use of water for irrigation or domestic purposes, the information submitted to the County Supervisor will include a statement as to the source of the water supply, right to the use of the water, and the adequacy and quality of the supply.

(f) *Responsibilities for planning development.* Planning construction and land development and obtaining technical services in connection with drawings, specifications and cost estimates are the sole responsibility of the applicant, with such assistance from the County Supervisor or District Director (whichever is the appropriate loan processing and servicing officer for the type of loan involved), as may be necessary to be sure that the development is properly planned in order to protect FmHA's security.

(1) *Responsibility of the applicant.* (i) The applicant will arrange for obtaining any required technical services from qualified technicians, tradespeople, and recognized plan services, and the applicant will furnish the FmHA sufficient information to describe fully the planned development and the manner in which it will be accomplished.

(ii) When items of construction or land development require drawings and specifications, they will be sufficiently complete to avoid any misunderstanding as to extent, kind, and quality of work to be performed. The applicant will provide FmHA with one copy of the drawings and specifications. Approval will be indicated by the applicant and acceptance for the purposes of the loan indicated by the County Supervisor or District Director on all sheets of the drawings and at the end of the specifications, and both instruments will be a part of the loan docket. After the loan is closed, the borrower will retain a conformed copy of the approved drawings and specifications, and provide another conformed copy to the contractor. Items not requiring drawings and specifications may be described in narrative form.

(iii) FmHA will accept final drawings and specifications and any modifications thereof only after the documents have been certified in writing as being in conformance with the applicable development standard, if required under paragraph (d)(1) of this section.

(A) Certifications may be accepted from licensed architects, professional engineers, authorized building officials, or certified code authorities. A building permit is not an acceptable substitute for this certification.

(B) The modifications of certified drawings or specifications must be certified by the same individual or organization that certified the original drawings and specifications. If such individual or organization is not available, the entire set of modified drawings and specifications must be recertified.

(C) The certification of modifications for single family housing (SFH) construction may be waived if the builder provides a written statement that the modifications are not regulated by the applicable development standard. The County Supervisor may consult with the State Office Architect/Engineer as to acceptance of the statement and granting a waiver.

(D) The following format is suggested for this certification and contains the minimum representation acceptable to FmHA:

Being (a licensed architect, authorized building official, etc.) in the State of ———, (I am) (we are) qualified to evaluate the technical sufficiency of construction documents for residential properties.

I/We have examined:

——— the drawings and specifications dated ——— prepared by *(name of firm or individual)* and related to the development of the *(project name and location)*

——— the modifications listed below, that have been clearly indicated on the drawings and specifications dated ——— prepared by ———, certified by ——— and related to the development of the ———.

Based upon this examination, to the best of my/our knowledge and belief, these documents conform to the (names and editions of applicable development standards), designated as the development standard for the project.

(This statement must be signed by the certifying official and dated. FmHA reserves the right to determine whether or not the statement is acceptable.)

(E) The following format is suggested for the statement that must accompany a request to waive the certification of a modification. This format contains the minimum representation acceptable to FmHA:

Being a home builder in the State of ———, I/we have examined the modification(s) listed below that have been clearly indicated on the dwellings and specifications dated ———, prepared by ——— and certified by ———.

The listed modification(s) is/are not, to the best of my/our knowledge and belief, regulated by the *(names and editions of the applicable development standards)*, which is/are designated as the development standards for this dwelling.

(This statement must be signed by the builder and dated. FmHA reserves the right to determine whether or not the statement is acceptable.)

(2) *Responsibility of the County Supervisor or District Director.* In accordance with program regulations for loans and grants they are required to process, the County Supervisor or District Director, for the sole benefit of FmHA, will:

(i) Visit each farm or site on which the development is proposed. For an FO loan, the County Supervisor and the applicant will determine the items of development necessary to put the farm in a livable and operable condition at the outset. Prepare Form FmHA 1924–1, when applicable in accordance with the Forms Manual Insert (FMI) for the form, after a complete understanding has been reached between the applicant and the County Supervisor regarding the development to be accomplished, including the dates each item of development will be started and completed.

(ii) Notify the loan or grant applicant in writing immediately if, after reviewing the preliminary proposal and inspecting the site, the proposal is not acceptable. If the proposal is acceptable,

an understanding will be reached with the applicant concerning the starting date for each item of development.

(iii) Discuss with the applicant the FmHA requirements with respect to good construction and land development practices.

(iv) Advise the applicant regarding drawings, specifications, cost estimates, and other related material which the applicant must submit to the FmHA for review before the loan can be developed. Advise the applicant of the information necessary in the drawings, how the cost estimates should be prepared, the number of sets of drawings, specifications, and cost estimates required, and the necessity for furnishing such information promptly. Advise the applicant that FmHA will provide appropriate specification forms, Form FmHA 1924–2, "Description of Materials," and Form FmHA 1924–3, "Service Building Specifications." The applicant may, however, use other properly prepared specifications.

(v) Advise the applicant regarding publications, plans, planning aids, engineering data, and other technical advice and assistance available through local, state, and Federal agencies, and private individuals and organizations.

(vi) Review the information furnished by the applicant to determine the completeness of the plans, adequacy of the cost estimates, suitability and soundness of the proposed development.

(vii) When appropriate, offer suggestions as to how drawings and specifications might be altered to improve the facility and better serve the needs of the applicant. The County Supervisor or District Director may assist the applicant in making revisions to the drawings. When appropriate, the contract documents will be forwarded to the State architect/engineer for review. For revisions requiring technical determinations that FmHA is not able to make, the applicant will be requested to obtain additional technical assistance.

(viii) Provide the applicant with a written list of changes required in the contract documents. The applicant will submit two complete revised (as requested) sets of contract documents, for approval. On one set, the County Supervisor or District Director will indicate acceptance on each sheet of the drawings, and on the cover of the specifications and all other contract documents. At least the date and the initials of the approval official must be shown. On projects where a consulting architect or engineer has been retained, this acceptance will be indicated only after the State Director has given written authorization. The marked set of documents shall be available at the job site at all times for review by FmHA. The second set will become part of the loan docket.

(ix) Review the proposed method of doing the work and determine whether the work can be performed satisfactorily under the proposed method.

(x) Instruct the applicant not to incur any debts prior to loan closing for materials or labor or make any expenditures for such purposes with the expectation of being reimbursed from loan funds.

(xi) Instruct the applicant not to commence any construction nor cause any supplies or materials to be delivered to the construction site prior to loan closing.

(xii) Under certain conditions prescribed in Exhibit H of this subpart, provide the applicant with a copy of the leaflet, "Warning—Lead-Based Paint Hazards," which is Attachment 1 of Exhibit H (available in any FmHA office), and the warning sheet, "Caution Note on Lead-Based Paint Hazard," which is Attachment 2 of Exhibit H (available in any FmHA office).

(g) *Surplus structures and use or sale of timber, sand, or stone.* In planning the development, the applicant and the County Supervisor or District Director should, when practicable, plan to use salvage from old buildings, timber, sand, gravel, or stone from the property. The borrower may sell surplus buildings, timber, sand, gravel, or stone that is not to be used in performing planned development and use net proceeds to pay costs of performing planned development work. In such a case:

(1) An agreement will be recorded in the narrative of Form FmHA 1924–1 which as a minimum will:

(i) Identify the property to be sold, the estimated net proceeds to be received, and the approximate date by which the property will be sold.

(ii) Provide that the borrower will deposit the net proceeds in the supervised bank account and apply any funds remaining after the development is complete as an extra payment on the loan, or in accordance with § 1965.13(f) of Subpart A of Part 1965 of this chapter for farm program loans.

(2) The agreement will be considered by the Government as modifying the mortgage contract to the extent of authorizing and requiring the Government to release the identified property subject to the conditions stated in the agreement without payment or other consideration at the time of release, regardless of whether or not the mortgage specifically refers to Form FmHA 1924–1 or the agreement to release.

(3) If the FmHA loan will be secured by a junior lien, all prior lienholders must give written consent to the proposed sale and the use of the net proceeds before the loan is approved.

(4) Releases requested by the borrower or the buyer will be processed in accordance with applicable release procedures in Subpart A or Subpart C of Part 1965 of this chapter, as appropriate.

(h) *Review prior to performing development work.* For the sole benefit of FmHA, prior to beginning development work, the County Supervisor or District Director will review planned development with the borrower. Adequacy of the drawings and specifications as well as the estimates will be checked to make sure the work can be completed within the time limits previously agreed upon and with available funds. Items and quantities of any materials the borrower has agreed to furnish will be checked and dates by which each item of development should be started will be checked in order that the work may be completed on schedule. If any changes in the plans and specifications are proposed, they should be within the general scope of the work as originally planned. Changes must be approved and processed in accordance with § 1924.10 of this subpart. The appropriate procedure for performing development should be explained to the borrower. Copies of FmHA forms that will be used during the period of construction should be given to the borrower. The borrower should be advised as to the purpose of each form and at what period during construction each form will be used.

(i) *Time of starting development work.* Development work will be started as soon as feasible after the loan is closed. Except in cases in which advance commitments are made in accordance with Subpart A of Part 1944 of this chapter or according to Section § 1924.13(e)(1)(vi)(A) or § 1924.13(e)(2)(ix) (A) of this subpart, no commitments with respect to performing planned development will be made by the County Supervisor, District Director, or the applicant before the loan is closed. The applicant will be instructed that before the loan is closed, debts should not be incurred for labor or materials, or expenditures made for such purposes, with the expectation of being reimbursed from loan funds except as provided in Subpart A of Part 1943 of this chapter and Subparts A and E of Part 1944 of this chapter. However, with the prior approval of the National Office, a State Supplement may be issued authorizing County Supervisors to permit applicants to commence

welldrilling operations prior to loan closing, provided: (1) It is necessary in the area to provide the water supply prior to loan closing, (2) the applicant agrees in writing to pay with personal funds all costs incurred if a satisfactory water supply is not obtained, (3) any contractors and suppliers understand and agree that loan funds may not be available to make the payment, (4) such action will not result under applicable State law in the giving of priority to mechanics and materialmen's liens over the later recorded FmHA mortgage, and (5) FmHA does not guarantee that the cost will be paid.

§ 1924.6 Performing development work.

All construction work will be performed by one, or a combination, of the following nethods: Contract, borrower, mutual self-help, or owner-builder. All development work must be performed by a person, firm or organization qualified to provide the service. Conditional commitment construction is covered under Subpart A of Part 1944 of this chapter.

(a) *Contract method.* This method of development will be used for all major construction except in cases where it is clearly not possible to obtain a contract at a reasonable or competitive cost. Work under this nethod is performed in accordance with a written contract.

(1) *Forms used.* Form FmHA 1924–6, "Construction Contract," will be used for SFH construction. Other contract documents for more complex construction, acceptable to the loan approval official and containing the requirements of Subpart E of Part 1901 of this chapter, may be used provided they are customarily used in the area and protect the interest of the borrower and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work. If needed, the Office of the General Counsel (OGC) will be consulted. The United States (including FmHA) will not become a party to a construction contract or incur any liability under it.

(2) *Contract provisions.* Contracts will have a listing of attachments and the provisions of the contract will include:

(i) The contract sum.

(ii) The dates for starting and completing the work.

(iii) The amount of liquidated damages to be charged.

(iv) The amount, method, and frequency of payment.

(v) Whether or not surety bonds will be provided.

(vi) The requirement that changes or additions must have prior written approval of FmHA.

(3) *Surety requirements.* (i) Unless an exception is granted in accordance with paragraph (a)(3)(iii) of this section or when interim financing will be used, surety that guarantees both payment and performance in the amount of the contract will be furnished when one or more of the following conditions exist:

(A) The contract exceeds $100,000.

(B) The loan approval official determines that a surety bond appears advisable to protect the borrower against default of the contractor.

(C) The applicant requests a surety bond.

(D) The contract provides for partial payments in excess of the amount of 60 percent of the value of the work in place.

(E) The contract provides for partial payments for materials suitably stored on the site.

(ii) If surety bonds are required the construction contract must indicate that the contractor will furnish properly executed surety bonds prior to the start of any work. Exhibits F and G of this subpart as revised by OGC if necessary to comply with local or state statutory requirements will be used as the forms of payment bond and performance bond to be provided. Unless noncorporate surety is provided, the surety bonds may only be obtained from a corporate bonding company listed on the current Department of the Treasury Circular 570 (published annually in the **Federal Register**), as holding a certificate of authority as an acceptable surety on Federal bonds and as legally doing business in the State where the land is located. Noncorporate sureties are not recommended and the State Director will be responsible for determining the acceptability of the individual or individuals proposed as sureties on the bonds. The State Director must determine that an individual or individuals proposed as sureties must have cash or other liquid assets easily convertible to cash in an amount at least equal to 25 percent more than the contract amount in order to be acceptable. The individual(s) will pledge such liquid assets in an amount equal to the contract amount. Fees charged for noncorporate sureties may not exceed fees charged by corporate sureties on bonds of equal amount and, in no case, may surety be provided by the applicant or any person or organization with an identity of interest in the applicant's operation. The United States (including FmHA) will incur no liability related in any way to a performance or payment bond provided in connection with a construction contract. FmHA will be named as co-obligee in the performance and payment bonds unless prohibited by state law.

(iii) When an experienced and reliable contractor cannot obtain payment and performance bonds meeting the surety requirements of paragraph (a)(3)(ii) of this section, the State Director may entertain a request from the applicant for an exception to the surety requirements. The applicant's request must specifically state why the proposed contractor is unable to obtain payment and performance bonds meeting the surety requirements, and why it is financially advantageous for the applicant to award the contract to the proposed contractor without the required bonds.

If the applicant's request is reasonable and justified, and if the proposed contractor is reliable and experienced in the construction of projects of similar size, design, scope, and complexity, the State Director may grant an exception to the surety requirements for loans or grants within the State Director's approval authority and accept one or a combination of the following:

(A) An unconditional and irrevocable letter of credit issued by a lending institution which has been reviewed and approved by OGC. In such cases, the construction contract must indicate that the contractor will furnish a properly executed letter of credit from a lending institution acceptable to FmHA prior to the start of any work. The letter of credit must remain in effect until the date of final acceptance of work by the owner and FmHA. In addition, the letter of credit must stipulate that the lending institution, upon written notification by FmHA of the contractor's failure to perform under the terms of the contract, will advance funds up to the amount of the contract (including all FmHA approved contract change orders) to satisfy all prior debts incurred by the contractor in performing the contract and all funds necessary to complete the work. Payments may be made to the contractor in accordance with paragraph (a)(12)(i)(C) of this section as if full surety bonds were being provided.

(B) If a letter of credit satisfying the conditions of paragraph (A) cannot be obtained, the State Director may accept a deposit in the amount of the contract, into an interest or non-interest bearing supervised bank account. In such cases, the construction contract must indicate that the contractor will furnish the required deposit prior to the start of any work and that the funds shall remain on deposit until final acceptance of work by the owner and FmHA. Payments may

be made to the contractor in accordance with paragraph (a)(12)(i)(C) of this section as if full surety bonds were being provided.

(C) When the provisions of paragraphs (a)(3)(iii) (A) or (B) of this section can be met except that a surety bond, a letter of credit, and/or deposits are not obtainable in full amount of the contract, the State Director may accept an amount less than the full amount of the contract provided all of the following conditions are met:

(*1*) The contractor provides a surety bond, a letter of credit, or deposits in the greatest amount possible, and provides documentation indicating the reasons why amounts exceeding the proposed amount cannot be provided.

(*2*) The applicant agrees to the amount of the surety bond, letter of credit, or deposits proposed, and the State Director determines that the applicant has the financial capability to withstand any financial loss due to default of the contractor.

(*3*) In the opinion of the State Director, the proposed amount and the method of payment will provide adequate protection for the borrower and the Government against default of the contractor.

(*4*) The contract provides for partial payments not to exceed 90 percent of the value of the work in place for that portion of the total contract which is guaranteed by an acceptable surety bond, letter of credit, or deposits, and partial payments not to exceed 60 percent of the value of the work in place for that portion of the total contract which is not guaranteed by surety, letter of credit, or deposits.

Example:

Contractor has a surety bond which guarantees payment and performance in an amount of $150,000 which represents 75 percent of the total contract amount of $200,000. The contractor's first request for payment appears thus:

—Value of work in place is $10,000.
—Payment for work guaranteed by surety is 75 percent times $10,000 times 90 percent is $6,750.
—Payment for work not guaranteed by surety is 25 percent times $10,000 times 60 percent is $1,500.
—Authorized payment is $8,250.

(Each partial payment shall reflect values for work guaranteed by surety, letter of credit, or deposits, and work not so guaranteed).

(iv) In cases where the contractor does not obtain payment and performance bonds in accordance with the surety requirements of paragraph (a)(3)(ii) of this section, or where an exception to the surety requirements is granted by the State Director, the following steps will be taken to protect the borrower and the government against latent obligations and/or defects in connection with the construction:

(A) The contractor will furnish a properly executed corporate latent defects bond or a maintenance bond in the amount of 10 percent of the construction contract; or

(B) An unconditional and irrevocable letter of credit in the amount of 10 percent of the construction contract issued by a lending institution which has been reviewed and approved by OGC; or

(C) A cash deposit into an interest or non-interest bearing supervised bank account in the amount of 10 percent of the construction contract;

(D) The period of protection against latent obligations and/or defects shall be one year from the date of final acceptance of work by the owner and FmHA;

(E) Final payment shall not be rendered to the contractor until the provisions of paragraphs (a)(3)(iv) (A), (B) or (C) of this section have been met;

(F) The contract will contain a clause indicating that the contractor agrees to provide surety or guarantee acceptable to the owner and FmHA against latent obligations and/or defects in connection with the construction.

(4) *Equal opportunity.* Section 1901.205 of Subpart E of Part 1901 of this chapter applies to all loans or grants involving construction contracts and subcontracts in excess of $10,000.

(5) *Labor provisions.* The provisions of Subpart D of Part 1901 of this chapter concerning wage and labor requirements will apply when the contract involves either LH grant assistance, or 9 or more units in a project being assisted under the HUD Section 8 housing assistance payment program for new construction.

(6) *Historical and archaeological preservation.* The provisions of Subpart F of Part 1901 of this chapter concerning the protection of historical and archaeological properties will apply to all construction financed, in whole or in part, by FmHA loans and grants. These provisions have special applicability to development in areas designated by SCS as Resource Conservation and Development (RC&D) areas. (See Part 1942, Subpart I of this chapter.)

(7) *Air and water acts.* Under Executive Order 11738, all loans or grants involving construction contracts for more than $100,000 must meet all the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Water Pollution Control Act (33 U.S.C., Section 1813). The contract should contain provisions obligating the contractor as a condition for the award of the contract as follows:

(i) To notify the owner of the receipt of any communication from Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

(ii) To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities as of the date of contract award.

(iii) To include or cause to be included the above criteria and requirements of paragraphs (a)(7) (i) and (ii) of this section in every nonexempt subcontract, and that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

(8) *Architectural barriers.* In accordance with the Architectural Barriers Act of 1968 (Pub. L. 90–480), as implemented by the General Services Administration regulations (41 CFR 101–19.6) and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as implemented by 7 CFR, Parts 15 and 15b, all facilities financed with FmHA loans and grants and which are accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with this Act. Copies of the Act and Federal accessibility design standards may be obtained from the Executive Director, Architectural and Transportation Barriers Compliance Board, Washington, DC 20201.

(9) *National Environmental Policy Act.* The provisions of Subpart G of Part 1940 of this chapter concerning environmental requirements will apply to all loans and grants including those being assisted under the HUD section 8 housing assistance payment program for new construction.

(10) *Obtaining bids and selecting a contractor.* (i) The applicant may select a contractor and negotiate a contract or contact several contractors and request each to submit a bid. For complex construction projects, refer also to § 1924.13(e) of this subpart.

(ii) When a price has already been negotiated by an applicant and a contractor, the County Supervisor, District Director or other appropriate FmHA official will review the proposed contract. If the contractor is qualified to perform the development and provide a warranty of the work and the price compares favorably with the cost of similar construction in the area, further

negotiation is unnecessary. If the FmHA official determines the price is too high or otherwise unreasonable, the applicant will be requested to negotiate further with the contractor. If a reasonable price cannot be negotiated or if the contractor is not qualified, the applicant will be requested to obtain competitive bids.

(iii) When an applicant has a proposed development plan and no contractor in mind, competitive bidding will be encouraged. The applicant should obtain bids from as many qualified contractors, dealers or tradespeople as feasible depending on the method and type of construction.

(iv) If the award of the contract is by competitive bidding, Form FmHA 1924–5, "Invitation for Bid [Construction Contract)," or another similar invitation bid form containing the requirements of Subpart E of Part 1901 of this chapter, may be used. All contractors from whom bids are requested should be informed of all conditions of the contract including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder. When applicable, copies of Forms FmHA 1924–6 and FmHA 400–6, "Compliance Statement," also should be provided to the prospective bidders.

(11) *Awarding the contract.* The borrower, with the assistance of the County Supervisor or District Director, will consider the amount of the bids or proposals, and all conditions which were listed in the "Invitation for Bid." On the basis of these considerations, the borrower will select and notify the lowest responsible bidder.

(i) Before work commences, the County Supervisor, District Director or other FmHA employee having knowledge of contracts and construction practices will hold a preconstruction conference with the borrower(s), contractor and architect/engineer (if applicable). The purpose of the conference is to reach a mutual understanding of each party's responsibilities under the terms and conditions of the contract documents and the loan agreement during the construction and warranty periods. Form FmHA 1924–16, "Record of Preconstruction Conference," may be used as a guide for an agenda.

(ii) A summary of the items covered will be entered in the running case record.

(iii) The contract will then be prepared, signed and copies distributed in accordance with the FMI for Form FmHA 1924–6.

(iv) After a borrower/contractor's contract or subcontract in excess of $10,000 is received in the FmHA County or District Office, the responsible FmHA official will send within 10 calendar days of the date of the contract or subcontract, a report similar in form and content to Exhibit C of Subpart E of Part 1901 of this chapter to the Area Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, at the applicable address listed in Exhibit E, Subpart E of Part 1901 of this chapter. The report must contain, at least, the following information: contractor's name, address and telephone number; employer's identification number; amount, starting date and planned completion date of the contract; contract number; and city and DOL region of the contract site. The information for this report should be obtained from the contractor when the contract is awarded.

(12) *Payments for work done by the contract method.* (i) Payments will be made in accordance with one of the following methods unless prohibited by state statute, in which case the State Director shall issue a State Supplement to this section:

(A) The "One-Lump-Sum" payment method will be used when the payment will be made in one lump-sum for the whole contract.

(B) The "Partial payments not to exceed 60 percent of the value of the work in place" payment method will be used when the contractor does not provide surety bond, a letter of credit, or deposits.

(C) the "Partial payments in the amount of 90 percent of the value of the work in place and of the value of the materials suitably stored at the site" payment method will be used when the contractor provides a surety bond equal to the total contract amount.

(D) The "Partial payments which reflect the portions of the contract amount which is guaranteed" method will be used when the contractor provides surety bonds, a letter of credit, or deposits less than the total amount of the contract in accordance with the provisions of paragraph (a)(3)(iii)(C) of this section.

(ii) When Form FmHA 1924–6 is used, the appropriate payment clause will be checked and the other payment clauses not used will be effectively crossed out.

(iii) When a contract form other than Form FmHA 1924–6 is used, the payment clause must conform with paragraph (a)(12)(i) of this section and the appropriate clause as set forth in Form FmHA 1924–6.

(iv) The borrower and FmHA must take precautionary measures to see that all payments made to the contractor are properly applied against bills for materials and labor procured under the contract. Prior to making any partial payment on any contract where a surety bond is not used, the contractor will be required to furnish the borrower and the FmHA with a statement showing the total amount owed to date for materials and labor procured under the contract. The contractor also may be required to submit evidence showing that previous partial payments were applied properly. When the borrower and the County Supervisor or District Director have reason to believe that partial payments may not be applied properly, checks may be made jointly to the contractor and persons who furnished materials and labor in connection with the contract.

(v) When partial payments are requested by the contractor and approved by the owner, the amount of the partial payment will be determined by one of the following methods:

(A) Based upon the percentage completed as shown on a recently completed and properly executed Form FmHA 1924–12, "Inspection Report."

(B) When the structure will be covered by an insured 10-year warranty, the insurer's construction inspector must provide FmHA with any available copies of inspection reports showing percentage of completion immediately after the inspections are completed. To make partial payments when copies of inspection reports are not available, the responsible FmHA official will make the inspections or will be guided by the provisions of § 1924.6(a)(12)(v)(C) of this subpart. If further assurance is deemed necessary to justify partial payments, the FmHA official may make onsite inspections or require additional information.

(C) Based upon an application for payment containing an estimate of the value of work in place which has been prepared by the contractor and accepted by the borrower and FmHA. When the contract provides for partial payments for materials satisfactorily stored at the site, the application for payment may include these items. Prior to receiving the first partial payment, the contractor should be required to submit a list of major subcontractors and suppliers and a schedule of prices or values of the various phases of the work aggregating the total sum of the contract such as excavation, foundations, framing, roofing, siding, mill work, painting, plumbing, heating, electric wiring, etc., made out in such form as agreed upon by the borrower, FmHA, and the contractor. In applying for payments, the contractor should submit a statement based upon this schedule. See Exhibit A

of this subpart for guidance in reviewing the contractor's schedule of prices and estimating the value of the work in place.

(vi) *Final payment.* (A) When the structure will be covered by an insured 10-year warranty, the insurer must provide and insured 10-year warranty policy (or a binder if the policy is not available) before final payment is made to the builder.

(B) Final payment of the amount due on the contract or disbursal of the FmHA loan funds where an interim loan was used will be made only upon completion of the entire contract, final inspection by FmHA, acceptance of the work by FmHA and the borrower, issuance of any and all final permits and approvals for the use and occupancy of the structure by any applicable state and local governmental authorities, and compliance by the contractor with all terms and conditions of the contract. In the event the work of construction is delayed or interrupted by reason of fire, flood unusually stormy weather, war, riot, strike, an order, requisition or regulation of any governmental body (excluding delays related to possible defects in the contractor's performance and excluding delays caused by the necessity of securing building permits or any required inspection procedures connected therewith) or other contingencies reasonably unforeseeable and beyond the reasonable control of the contractor, then with the written consent of FmHA, the date of completion of the work may be extended by the owner by the period of such delay, provided that the contractor shall give the owner and FmHA written notice within 72 hours of the occurrence of the event causing the delay or interruption.

(C) Prior to making final payment on the contract when a surety bond is not used or disbursing the FmHA loan funds when an interim loan was used, FmHA will be provided with a Form FmHA 1924–9, "Certificate of Contractor's Release," and Form FmHA 1924–10, "Release by Claimants." executed by all persons who furnished materials or labor in connection with the contract. The borrower should furnish the contractor with a copy of the "Release by Claimants" form at the beginning of the work in order that the contractor may obtain these releases as the work progresses.

(*1*) If such releases cannot be obtained, the funds may be disbursed provided all the following can be met:

(*i*) Release statements to the extent possible are obtained;

(*ii*) The interests of FmHA can be adequately protected and its security position is not impaired; and

(*iii*) Adequate provisions are made for handling the unpaid account by withholding or escrowing sufficient funds to pay any such claims or obtaining a release bond.

(*2*) The State Director may issue a State Supplement which will:

(*i*) Not require the use of Form FmHA 1924–10, if, under existing state statutes, the furnishing of labor and materials gives no right to a lien against the property, or

(*ii*) Provide an alternative method to protect against mechanic's and materialmen's liens. In this case, the use of Form FmHA 1924–10 is optional.

(b) *Borrower method.* The borrower method means performance of work by or under the direction of the borrower, using one or more of the ways specified in this paragraph. Development work may be performed by the borrower method only when it is not practicable to do the work by the contract method; the borrower possesses or arranges through an approved self-help plan for the necessary skill and managerial ability to complete the work satisfactorily; such work not interfere seriously with the borrower's farming operation or work schedule, and the County Office caseload will permit a County Supervisor to properly advise the borrower and inspect the work.

(1) *Ways of performing the work.* The borrower will:

(i) Purchase the material and equipment and do the work.

(ii) Utilize lump-sum agreements for (A) minor items or minor portions of items of development, the total cost of which does not exceed $5,000 per agreement, such as labor, material, or labor and material for small service buildings, repair jobs, or land development; or (B) material and equipment which involve a single trade and will be installed by the seller, such as the purchase and installation of heating facilities, electric wiring, wells, painting, liming, or sodding. All agreements will be in writing, however, the County Supervisor may make an exception to this requirement when the agreement involves a relatively small amount.

(2) *Acceptance and storage of material on site.* The County Supervisor will advise the borrower that the acceptance of material as delivered to the site and the proper storage of material will be the borrower's responsibility.

(3) *Payment for work done by the borrower method.*—(i) *Payments for labor.* Before the County Supervisor countersigns checks for labor, the borrower must submit a completed Form FmHA 1924–11, "Statement of Labor Performed," for each hired worker performing labor during the pay period. Ordinarily, checks for labor will be made payable to the workers involved. However, under justifiable circumstances, when the borrower has paid for labor with personal funds and has obtained signatures of the workers on Form FmHA 1924–11 as having received payment, the County Supervisor may countersign a check made payable to the borrower for reimbursement of these expenditures. Under no circumstances will the County Supervisor permit loan funds or funds withdrawn from the supervised bank account to be used to pay the borrower for the borrower's own labor or labor performed by any member of the borrower's household.

(ii) *Payment for equipment, materials or lump-sum agreements.* (A) Before countersigning checks for equipment or materials, the County Supervisor must normally have an invoice from the seller covering the equipment or materials to be purchased. When an invoice is not available at the time the check is issued, an itemized statement of the equipment or materials to be purchased may be substituted until a paid invoice from the seller is submitted, at which time the prepurchase statement may be destroyed.

(B) When an invoice is available at the time the check is drawn, the check will include a reference to the invoice number, the invoice date if unnumbered and, if necessary, the purpose of the expenditure.

(C) The check number and date of payment will be indicated on the appropriate Form FmHA 1924–11, invoice, itemized statement of equipment or materials and/or lump-sum agreement.

(D) Ordinarily, checks for equipment or materials will be made payable to the seller. Under justifiable circumstances, when the borrower has paid for equipment or materials with personal funds and furnished a paid invoice, the County Supervisor may countersign a check made payable to the borrower for reimbursement of these expenses.

(E) When an invoice includes equipment or materials for more than one item of development, the appropriate part of the cost to be charged against each item of development will be indicated on the invoice by the borrower, with the assistance of the County Supervisor.

(F) Payment made under lump-sum agreements will be made only when all

items of equipment and materials have been furnished, labor has been performed as agreed upon, and the work has been accepted by the borrower and FmHA.

(G) Each paid Form FmHA 1924–11, invoice, itemized statement for equipment or material and/or lump-sum agreement will be given to the borrower in accordance with the FMI.

(c) *Mutual self-help method.* The mutual self-help method is performance of work by a group of families by mutual labor under the direction of a construction supervisor, as described in Exhibit E of Subpart A of Part 1944 of this chapter. The ways of doing the work, buying materials, and contracting for special services are like those used for the borrower method. Materials can be bought jointly by the group of families, but payments will be made individually by each family. In the case of RH loans to families being assisted by Self-Help Technical Assistance (TA) grants in accordance with Subpart I of Part 1933 of this chapter, the County Supervisor may countersign checks for materials and necessary contract work made payable directly to the TA grantee, provided the District Director determines that:

(1) The grantee acts in the same capacity as a construction manager in the group purchase of material and services.

(2) The grantee has an adequate bookkeeping system approved by the District Director to assure that funds in each RH account are properly distributed and maintained.

(3) The grantee receives no compensation in the way of profit or overhead for this service and all discounts and rebates received in connection with the purchase of materials or services are passed on to the participating familes.

(4) The grantee has a record-keeping system which shows that the costs of the materials and services were prorated to each borrower's account in relation to the actual material and service used by each borrower.

(d) *Owner-builder method.* This method of construction applies only to RRH loans made under Subpart E of Part 1944 of this chapter. Regulations governing this method are found at § 1924.13(e)(2) of this subpart.

§ 1924.7 [Reserved]

§ 1924.8 Development work for modular/panelized housing units.

(a) Exhibit B of this subpart applies to all loans involving modular/panelized housing units.

(b) Complete drawings and specifications will be required as prescribed in Exhibit C of this subpart. Each set of drawings will contain the design of the foundation system required for the soil and slope conditions of the particular site on which the modular/panelized house is to be placed.

(c) The maufacturer will provide a certification (Exhibit B, Attachment 5 of this subpart), stating that the building has been built substantially in accordance with the drawings and specifications. The builder will also provide a certification that the onsite work complies with drawings, specifications, and the applicable development standard (Exhibit B, Attachment 5 of this subpart).

(d) Responsibility for field inspections will be in accordance with § 1924.9(a) of this subpart. Frequency and timing of inspections will be in accordance with § 1924.9(b) of this subpart, except that the Stage 2 inspection should be made during the time and in no case later than two working days after the crews commence work on the site and the house is being erected or placed on the foundation, to determine compliance with the accepted drawings and specifications.

(e) Periodic plant inspections will be performed in accordance with paragraphs II and III of Exhibit B of this subpart. FmHA employees responsible for inspections in the area in which the manufacturing plant or material supply yard is located will perform such inspections as deemed necessary under paragraph III of Exhibit B of this subpart.

(1) Plant inspections will be made if the type construction method used could restrict adequate inspections on the building site.

(2) Plant inspections will be made as often as necessary; however, after initial inspection and acceptance of the unit, only when it appears advisable to ascertain the performance and continuing stability of accepted materials and construction.

(f) Only one contract will be accepted for the completed house on the site owned or to be bought by the borrower. The manufacturer of the house or the manufacturer's agent may be the prime contractor for delivery and erection of the house on the site or a builder may contract with the borrower for the complete house in place on the site. Such contracts should provide that payments will be made only for work in place on the borrower's site.

(g) Payments for modular/panelized units will be made in accordance with the terms of the contract and in compliance with § 1924.6(a)(12) of this subpart.

§ 1924.9 Inspection of development work.

The following policies will govern the inspection of all development work.

(a) *Responsibility for inspection.* The County Supervisor or District Director, accompanied by the borrower when practicable, will make final inspection of all development work and periodic inspections as appropriate to protect the security interest of the government. In this respect, inspections other than final inspections, may be conducted by other qualified persons as authorized in paragraph (b)(3) of this section, in Section 1944.17(a)(2)(iv) of Subpart A of Part 1944 of this chapter, in Subpart A of Part 2024 of this chapter (available in any FmHA office) and as authorized under other agreements executed by, or authorized by, the National Office.

The borrower will be responsible for making inspections necessary to protect the borrower's interest. FmHA inspections are not to assure the borrower that the house is built in accordance with the plans and specifications. The inspections create or imply no duty or obligation to the particular borrower. FmHA inspections are for the dual purpose of determining that FmHA has adequate security for its loan and is achieving the statutory goal of providing adequate housing. If difficult technical problems are encountered, the County Supervisor or District Director should request the assistance of the State Office or a qualified technician from SCS or the State University Cooperative Extension Service.

(b) *Frequency of inspections.* The County Supervisor or District Director will inspect development work as frequently as necessary to assure that construction and land development conforms to the drawings and specifications. The final inspection will be made at the earliest possible date after completion of the planned development. When several major items of development are involved, final inspection will be made upon completion of each item.

(1) For new buildings and additions to existing buildings, inspections will be made at the following stages of construction and at such other stages of construction as determined by the County Supervisor or District Director except as modified by paragraph (b)(3) of this section.

(i) *Stage 1.* Customarily, the initial inspection in construction cases is made just prior to or during the placement of concrete footings or monolithic footings

and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. However, when it is not practicable to make the initial inspection prior to or during the placement of concrete, the County Supervisor or District Director will make the initial inspection as soon as possible after the placement of concrete and before any backfill is in place.

(ii) *Stage 2.* The Stage 2 inspection will be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing, and electrical work is in place and visible, and wall insulation and vapor barriers are installed. Customarily, this is prior to installation of brick veneer or any interior finish which would include lath, wallboard and finish flooring.

(iii) *Stage 3.* The final inspection will be made when all on-site and off-site development has been completed and the structure is ready for occupancy or its intended use.

(2) For rehabilitation of existing buildings, inspections will be made in accordance with paragraphs (b)(1) (ii) and (iii) of this section, and at such other stages of construction to assure that construction is being performed in a professional manner and in accordance with the FmHA approved drawings and specifications.

(3) For new construction when the structure will be covered by an insured 10-year warranty plan as described in Exhibit L of this subpart, only the final inspection is required, except in cases when partial payments are required when the provisions of § 1924.6(a)(12)(v) of this subpart will be followed.

(4) Arrangements should be made to have the borrower join the County Supervisor or the District Director in making periodic inspections as often as necessary to provide a mutual understanding with regard to the progress and performance of the work.

(5) The Borrower should make enough periodic visits to the site to be familiar with the progress and performance of the work, in order to protect the borrower's interest. If the borrower observes or otherwise becomes aware of any fault or defect in the work or nonconformance with the contract documents, the borrower should give prompt written notice thereof to the contractor with a copy to the County Supervisor or District Director responsible for servicing the type of loan or grant involved.

(6) The borrower should, when practicable, join the County Supervisor or District Director in making all final inspections.

(7) When irrigation equipment and materials are to be purchased and installed, a performance test under actual operating conditions by the person or firm making the installation should be required before final acceptance is made. The test should be conducted in the presence of the borrower, a qualified technician, and, when practicable, the County Supervisor or District Director. If the FmHA official is not present at the performance test, he or she should request the technician to furnish a report as to whether or not the installation meets the requirements of the plans and specifications.

(8) For irrigation and drainage construction or any dwelling construction where part or all of the work will be buried or backfilled, interim inspections should be made at such stages of construction that compliance with plans and specifications can be determined.

(c) *Recording inspections and correction of deficiencies.* All periodic and final inspections made by the County Supervisor or District Director will be recorded on Form FmHA 1924–12 in accordance with the FMI. The County Supervisor or District Director will be responsible for following up on the correction of deficiencies reported on Form FmHA 1924–12. When an architect/engineer is providing services on a project, the District Director should notify the architect/engineer immediately of any fault or defect observed in the work or of any nonconformance with the contract document. If the borrower or the contractor refuses to correct the deficiencies, the District Director will report the facts to the State Director who will determine the action to be taken. No inspection will be recorded as a final inspection until all deficiencies or nonconforming conditions have been corrected.

(d) *Acceptance by responsible public authority.* When local (city) county, state, or other public authority) codes and ordinances require inspections, final acceptance by the local authority having jurisdiction will be required prior to final inspection or acceptance by FmHA.

(e) *Acceptance by project architect.* If architectural services pursuant to § 1924.13(a) of this subpart have been obtained, final acceptance by the project architect pursuant to § 1924.13(a)(5)(v) of this subpart will be required prior to acceptance by FmHA.

§ 1924.10 Making changes in the planned development.

The borrower may request changes in the planned development in accordance with this section.

(a) *Authority of the County Supervisor.* The County Supervisor is authorized to approve changes in the planned development involving loans and grants within the County Supervisor's approval authority provided:

(1) The change is for an authorized purpose and within the scope of the original proposal.

(2) Sufficient funds are deposited in the borrower's supervised bank account or with the interim lender, as appropriate, to cover the contemplated changes when the change involves additional funds to be furnished by the borrower.

(3) The change will not adversely affect the soundness of the operation or FmHA's security. If uncertain as to the probable effect the change would have on the soundness of the operation or FmHA security, the County Supervisor will obtain advice from the District Director on whether to approve the change.

(4) If a surety bond has been provided on the full amount of the construction contract, the aggregate amount of all contract change orders on Form FmHA 1924–7, "Contract Change Order," or other acceptable form will not exceed 20 percent of the original contract amount. Change orders for contracts on which a surety bond has been provided which increases the original contract amount by more than 20 percent may only be approved if additional surety is provided in the full revised amount of the contract. For purposes of this paragraph, letters of credit and deposits are not considered surety.

(5) Change orders for contracts on which letters of credit or deposits have been provided on the full amount of the contract which will increase the original contract amount are approved only if additional letters of credit or deposits are provided in the full revised amount of the contract.

(6) Modifications have been certified in accordance with § 1924.5(f)(1)(iii) or certification has been waived in accordance with § 1924.5(f)(1)(iii)(C) of this subpart.

(b) *Authority of the District Director.* The District Director is authorized to approve changes in the development planned with RRH, RCH, and RHS loans and LH loans and grants within the District Director's approval authority, provided the conditions in § 1924.10(a) have been met. For such loans in excess

of the District Director's approval authority, the borrower's request with the District Director's recommendation will be forwarded to the State Director for consideration.

(c) *Recording changes in the planned development.* (1) Changes should be accomplished only after FmHA written approval. Changes will not be included in payment requests until approved by the borrower; the contractor, if applicable; the architect/engineer, if applicable; and the FmHA loan approval official. Examples of changes requiring documentation are:

(i) Any changes in labor and materials and their respective costs.

(ii) Changes in facility design.

(iii) Any decrease or increase in unit-price on final measurements that are different from those shown in the bidding schedule.

(iv) Any increase or decrease in the time to complete the project.

(2) All changes shall be recorded in chronological order as follows:

(i) Contract method. Changes shall be numbered in sequence as they occur using Form FmHA 1924–7 with necessary attachments.

(ii) Borrower method. An increase or decrease in the cash cost, extension of time, transfer of funds between items, or an addition or deletion of items of development, will be summarized on the front of Form FmHA 1924–1 by striking through the original figures on items and writing in the changes. Changes made in the "Development Plan" in the working drawings, or in the plans and specifications will be dated and initialed by all parties.

(iii) Mutual self-help method. [See paragraph (c)(2)(ii) of this section.]

(iv) Owner-builder method. [See paragraph (c)(2)(i) of this section.]

(3) All changes in facility design and/or materials must be certified in accordance with § 1924.5(f)(1)(iii) of this subpart.

§ 1924.11 District Director's review of incomplete development.

During monthly District Office work organization meetings and during regular visits to the County Office, the District Director will review the progress that is being made in completing development financed with loans within the District Director's and County Supervisor's responsibility.

(a) Once each year the District Director will make a comprehensive review of all development work not completed within the time scheduled. For incomplete development financed with loan or grant funds within the responsibility of the District Director, the District Director will take the necessary actions to assure that the borrower or grantee completes the planned development. For incomplete development financed with loan or grant funds within the responsibility of the County Supervisor, the District Director will give the necessary direction to the County Supervisor to assure completion of the work. In connection with these responsibilities, the District Director will consider:

(1) The current farm and home operations with respect to the need for the development as originally planned.

(2) Revisions to the development plan.

(3) Funds remaining in the supervised bank account.

(4) Need for additional funds.

(5) Personal funds that could be furnished by the borrower.

(6) Estimated completion dates.

(7) The borrower's attitude with respect to completing the development.

(b) After a complete review of the status of development in both the District and County Offices has been made, the District Director will make a written report to the State Director which will include observations and recommendations regarding incomplete development. The report may be included in the District Director's regular report, and will include:

(1) The number of cases in which borrowers have not completed their development within 9, 15 or 24 months when authorized, and also the number of cases in which funds have been exhausted and the work is incomplete.

(2) The number of borrowers who have not completed their development within 3 years from the loan closing, and indicate the action that was taken in each such case.

(c) If the borrower has not completed development work within 3 years after the date of loan closing and the District Director has determined that the borrower cannot or will not complete the development, the District Director will so indicate on Form FmHA 1924–1 and request the State Director to withdraw, for application on the loan, any unused development funds remaining in the borrower's supervised bank account, if the borrower will not sign a check for a refund to the loan account.

§ 1924.12 Warranty of development work.

(a) Form FmHA 1924–19, "Builder's Warranty," or an insured 10-year home warranty as described in Exhibit L of this subpart, and normal trade warranties on items of equipment will be issued to the borrower at the completion of new building construction, dwelling rehabilitation by the contract method, all cases of newly completed and previously unoccupied dwellings or construction under conditional commitments issued to builders and sellers.

(b) If the warranty is not an insured 10-year warranty, a completed Form FmHA 1924–19, with warranty protection for 1 year, must be provided by the builder upon final acceptance of the work by the owner and FmHA. If an insured 10-year warranty is provided, the requirements of Exhibit L of this subpart apply, and a copy of the warranty insurance policy or a binder must have been received by FmHA prior to disbursement of the final payment to the builder.

(c) If, for some reason, the warranty insurance policy cannot be issued, the contractor will be required to execute Form FmHA 1924–19 and the case will be forwarded to the State Director for consideration of debarment under the provisions of Subpart E of Part 1924 of this chapter. The County Supervisor will assist the borrower to the extent necessary under the provisions of the warranty and Subpart F of Part 1924 of this chapter.

(d) The County Supervisor will take the following action prior to the expiration of the first year of the warranty period:

(1) As soon as the warranty has been executed, the follow-up date for sending Form FmHA 1924–21, "Notice of Expiration of First Year of Warranty," which will be used for the 1 year warranty or the first year of the insured 10-year warranty, will be posted to the "Servicing and Supervision" section of the Management System card.

(2) Form FmHA 1924–21 is provided for use in notifying the borrower of the expiration date of the first year of the warranty. This letter will be mailed to the borrower early in the second month preceding the expiration date of the first year of the warranty period.

(3) If the County Supervisor or District Director does not hear from the borrower within 30 days, it can reasonably be assumed that no complaint exists or that any complaint has been satisfied unless information to the contrary has been received.

(4) If the borrower notifies FmHA that any complaint has not been satisfied, an onsite inspection shall be made as early as possible, but not later than 1 month preceding the expiration date of the first year of the warranty. The results of the inspection will be recorded on Form FmHA 1924–12. If the borrower has complaints, the case should be handled in accordance with the provisions of Subpart F of Part 1924 of this chapter, or as otherwise provided in this subpart.

§ 1924.13 Supplemental requirements for more complex construction.

This section includes additional provisions that apply to planning and conduct of construction work on all multiple family housing projects and other projects that are more extensive in scope and more complex in nature than individual housing units or farm buildings. This section will apply in addition to all other requirements contained elsewhere in this subpart.

(a) *Architectural services.* Complete architectural services, as defined in § 1924.4(o)(1) of this subpart are recommended on all projects. They are required for projects involving an LH grant and for all loans for RRH, RCH, and LH projects consisting of more than 4 units unless prior consent to making an exception to the requirements for complete architectural services is obtained from the National Office. If the applicant or contractor is an architect or organization with architectural capability, the applicant must, nevertheless, hire an independent qualified architect or architectural firm to inspect the construction work and perform other needed services during the construction and warranty phases. See Guide 4, Attachment 1, "Attachment to AIA Document—Standard Form of Agreement Between Owner and Architect," for further information (available in any FmHA office).

(1) *Exception.* Any request for National Office consent to an exception being made for complete architectural services should include the proposed drawings and specifications, method of providing specific services, the comments and recommendations of the FmHA State Architect, and any other pertinent information. The State Director must determine that any services for which an exception is requested can be performed by qualified State or District Office staff members.

(2) *Selecting the architect.* The applicant is responsible for selecting the architect. The District Director with the advice of the State architect/engineer should discuss with the applicant the selection of the architect for the job as early as possible to assist in the site selection and participate in early consultations regarding project scope and design.

(3) *Architectural fees.* Fees for architectural services shall not exceed the fee ordinarily charged by the profession for similar work when FmHA financing is not involved. The fee should cover only the architectural services rendered by the architect. Fees for special services rendered by architects, such as the packaging of the loan application or additional non-architectural services, will not be authorized to be paid with loan funds.

(4) *Agreement between borrower and architect.* The borrower and the architect will execute a written agreement. The agreement must provide:

(i) The services listed in paragraph (a)(5) of this section.

(ii) The amount of the fee and how it will be determined and paid.

(iii) That the agreement and any amendments to the agreement shall not be in full force and effect until concurred with in writing by the State Director or the State Director's delegate, and it will contain the following provision:

> The Farmers Home Administration, as potential lender or insurer of funds to defray the costs of this agreement and without liability for any payments thereunder, hereby concurs in the form, content and the execution of this agreement.
>
> Date _____
> FmHA Approval Official _____
> Title _____

(5) *Specific services.* Architectural services will include six consecutive phases as follows:

(i) *Schematic design phase.* The architect will:

(A) Consult with the applicant to obtain available information pertinent to the project requirements.

(B) Consult with FmHA State architect/engineer about FmHA requirements and procedures.

(C) Assist in preparing the project design after analyzing engineering and survey data on the site selected by applicant.

(D) Prepare schematic design studies consisting of drawings and other documents illustrating the scale and relationship of project components for the applicant's approval.

(E) Submit estimates of current development costs based on current area, volume, or other unit costs.

(F) When the applicant and FmHA have accepted the schematic design studies and estimated development costs, the project architect may be authorized to proceed with the next phase.

(ii) *Design development phase.* The architect will:

(A) Prepare the design development exhibits from the accepted schematic design studies for approval by the applicant. These exhibits should consist of drawings and other documents to fix and describe the size and character of the entire project as to structural, mechanical, and electrical systems, materials, and other essentials as appropriate.

(B) Submit a further statement of probable construction cost.

(C) Obtain applicant and FmHA approval of drawings, specifications, and authorization to proceed with next phase.

(iii) *Construction documents phase.* The architect will:

(A) Prepare the working drawings and specifications from the approved design development drawings and set forth in detail the requirements for the construction of the entire project in accordance with applicable regulations and codes; for example, necessary bidding information, assistance in preparing bidding forms, conditions of the construction contract, and the form of agreement between applicant/owner and contractor.

(B) Submit a final and more comprehensive statement of probable development cost. It should show a breakdown of the estimated total development cost of the project and the various trades in enough detail for an adequate review.

(C) Obtain the acceptance of the applicant and FmHA for contract documents, including approval of the final drawings and specifications and authorization to proceed.

(D) Discuss with the applicant various items as they develop.

(iv) *Bidding or negotiation phase.* The architect will, as appropriate, for a bidded or negotiated contract:

(A) Assist in review and selection of bidders and submission of contract documents to selected bidders.

(B) Assist in the interpretation of drawings and specifications, and other contract documents.

(C) Receive and tabulate all bids.

(D) Review the bids and the negotiated proposals and assist in the award and preparation of construction contracts.

(v) *Construction phase.* This phase includes the administration of the construction contract. It will commence with the award of the construction contract and end when the borrower makes final payment to the contractor. The architect will:

(A) Attend the preconstruction conference. Advise and consult with the borrower (or the borrower's representative) and issue the borrower's instructions to the contractor.

(B) Prepare change orders.

(C) Keep construction accounts and work as the general administrator of the project during construction.

(D) Interpret the contract documents and have the authority to reject all work and materials which do not comply.

(E) Review and approve shop drawings, samples, and other submissions of the contractor for

conformance with the design concept and for compliance with the contract documents.

(F) Conduct periodic inspections of all phases of construction to determine compliance with the contract documents and certify as to the amount is in place and materials suitably stored on site for partial payment estimates. These inspections will be augmented, when necessary, by inspections performed by structural, mechanical, and electrical representatives. Periodic inspections should be made as frequently as is necessary to verify that the work conforms with the intent of the contract documents and that a high quality of workmanship is maintained. The State Director may require a full-time project representative on projects with a total development cost of $750,000 or more, when in the opinion of the State Director there is a need for such representative, and the State Director states the reasons for such need to the borrower.

(G) Determine, based on the inspections, the dates of substantial completion and final completion; receive on the borrower's behalf all written guarantees and related documents assembled by the contractor; and issue a final certificate for payment.

(vi) *Warranty phase.* The architect will advise and consult with the borrower, as the borrower's representative, about items to be corrected within the warranty period. The architect will accompany the FmHA representative during the inspection required one month prior to expiration of the warranty period.

(b) *Other professional services.* The State Director, on the recommendation of the State architect/engineer, may request that additional professional services be provided.

(1) Professional services typically include soils engineering, structural engineering, civil engineering, surveying, land planning, or professional cost estimation or certification. Fees for these services may be paid directly by the borrower or by the architect as reimbursable expenses.

(2) When a project representative is utilized, unless otherwise agreed, the representative will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the project representative to the applicant and to FmHA for acceptance in writing. If the applicant provided the project representative, the applicant must submit a resume of the representative's qualifications to the project architect/engineer and FmHA for acceptance in writing, prior to the preconstruction conference. The project representative will attend the preconstruction conference where duties and responsibilities will be fully discussed. The project representative will work under the general supervision of the architect/engineer. The project representative will maintain a daily diary in accordance with the following:

(i) The diary shall be maintained in a hard-bound book.

(ii) The diary shall have all pages numbered and all entries in ink.

(iii) All entries shall be on daily basis, beginning with the date and weather conditions.

(iv) Daily entries shall include daily work performed, number of men and equipment used in the performance of the work, and all significant happenings during the day.

(v) The diary shall be made available to FmHA personnel and will be reviewed during project inspections.

(vi) The project representative's diary will become the property of the owner after the project is accepted and final payments are made.

(c) *Drawings.* The type and kinds of drawings should be in accordance with Exhibit C of this subpart and Subpart D of Part 1944 of this chapter.

(1) The drawings must be clear, accurate, with adequate dimensions and of sufficient scale for estimating purposes.

(2) Construction sections and large-scale details sufficient for accurate bidding and for the purpose of correlating all parts of the work should be part of the general drawings. This is particularly important where the size of a project makes necessary the preparation of the general drawings at a scale of 1/8 inch equals 1 foot or less.

(3) Mechanical and electrical work should be shown on separate plans.

(4) Schedules should be provided for doors, windows, finishes, electrical fixtures, finish hardware, and any other specialty items necessary to clarify drawings.

(d) *Specifications.* Trade-type specifications (specifications divided into sections for various trades) should be used. The specifications should be complete, clear, and concise, with adequate description of the various classes of work shown under the proper sections and headings.

(e) *Methods of administering construction.* Projects involving a total development cost of less than $100,000 which do not include an LH grant may, with the approval of the State Director, follow the contract procedure in § 1924.6(a) of this subpart without modification. Construction of all other projects, however, will be administered by the contract method or owner-builder method as set forth in this section.

(1) *Contract method.* This method of development will be used for all complex construction except in cases where owner-builder method is authorized. Development under this method is done in accordance with § 924.6(a) of this subpart except as modified by this paragraph. All construction work will be completed under one written construction contract. Guide 1, "Contract Documents," of this subpart (available in any FmHA office) is provided to assist FmHA personnel and applicants in assembling and reviewing contract documents for more complex construction such as that administered under this section.

(i) *Competitive bidding methods.* (A) All construction contracts must be awarded on the basis of competitive bidding unless an exception is granted in accordance with paragraph (e)(1)(vii) of this section thereby permitting contract negotiation. The applicant's architect should prepare the bidding documents. Public notice must be given inviting all interested bidders to submit a bid. Prospective bidders may be contacted asking for their bids; however, public notice is necessary so that all local contractors have the opportunity to submit bids.

(B) A bid bond is required from each bidder in the amount of 5 percent of the bid price as assurance that the bidder will, upon acceptance of the bid, execute the required contract documents within the time specified.

(C) The construction contract will be awarded based on the contract cost, and all conditions listed in the "Invitation to Bid."

(D) If advertising does not provide a satisfactory bid in the opinion of the applicant and FmHA, the applicant shall reject all bids and will then be free to negotiate with bidders on anyone else to obtain a satisfactory contract. The following conditions must be met:

(*1*) The State Director determines that the original competitive bid process was handled in a satisfactory manner and that there is no advantage to advertising for competitive bid again.

(*2*) The requirements of paragraph (e)(1)(vii) of this section are met.

(E) If there is no agreement by FmHA and the applicant as to the construction cost, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal in accordance with Subpart B of Part 1900 of this chapter.

(ii) *Contract documents.* Contract documents will conform with recognized professional practices as prescribed in

this paragraph. Such contract documents will contain substantially the following:

Item I Invitation for Bids (Form FmHA 1924–5)
Item II Information for Bidders
Item III Bid
Item IV Bid Bond
Item V Agreement (Construction Contract)
Item VI Compliance Statement (Form FmHA 400–6)
Item VII General Conditions
Item VIII Supplemental General Conditions
Item IX Payment Bond (Exhibit F of this subpart)
Item X Performance Bond (Exhibit G of this subpart)
Item XI Notice of Award
Item XII Notice of Proceed
Item XIII Drawings and Specifications
Item XIV Addenda
Item XV Contract Change Order (Form FmHA 1924–7)
Item XVI Labor Standards Provisions [Exhibit A to Subpart D of Part 1901 of this chapter, where applicable]
Item XVII Monthly Employment Utilization Report (Form CC–257)
Item XVIII Partial Payment Estimate (Form FmHA 1924–18)
Item XIX Builder's Warranty (Form FmHA 1924–19)

(A) Substitution of term "architect" for "engineer" may be necessary on some of the forms. Other modifications may be necessary in some cases to conform to the nature and extent of the project. All such contract documents and related items will be concurred with by the State Director, with the assistance of OGC prior to the release of invitations to bid.

(B) Items listed as I through IV and item XI of paragraph (e)(1)(ii) of this section may be omitted when an exception to the competitive bidding requirement is granted in accordance with paragraph (e)(1)(vii) of this section, thereby permitting a negotiated contract.

(C) All negotiated contracts shall include a provision to the effect that the borrower, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions.

(D) A provision of liquidated damages *will* be included in all contracts. The liquidated damage amount must be reasonable and represent the best estimate possible of how much interest or other costs will accrue on the loan, and also represent any loss of rent or other income which would result from a delay in the completion of the project beyond the estimated completion date.

(E) All contracts shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). This Act prohibits anyone from inducing any person in connection with the construction to give up any part of the compensation to which the person is otherwise entitled.

(F) All contracts will contain a certification by the applicant indicating that there is not now nor will there be an identity of interest between the applicant and any of the following: contractor, architect, engineer, attorney, subcontractors, material suppliers, equipment lessors, or any of their members, directors, officers, stockholders, partners, or beneficiaries unless specifically identified to FmHA in writing prior to the award of the contract. All contracts must also indicate that when any identity of interest exists or comes into being, the contractor agrees to provide certification as to the actual cost of the work performed under the construction contract and to have all construction records audited by an independent Certified Public Accountant (CPA) or Licensed Public Accountant (LPA) (licensed prior to December 31, 1970) who will provide an unqualified opinion as to the actual cost of construction.

(G) All contracts on any form other than Form FmHA 1924–6, must contain the language of clause (D) of Form FmHA 1924–6, which is available in all FmHA offices. The language of clause (D) of Form FmHA 1924–6 sets forth the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity required by Executive Order 11246, the Equal Opportunity clause published at 41 CFR 60–1.4 (a) and (b), and the Standard Federal Equal Employment Opportunity Construction Contract Specifications required by Executive Order 11246. For contract forms other than Form FmHA 1924–6, Form AD 767, "Equal Employment Opportunity Contract Compliance Notices," which can be obtained from the Finance Office, should be attached and made a part of the contract.

(H) All contracts will contain a provision that they are not in full force and effect until concurred with by the State Director or the State Director's delegate, in writing. Therefore, before loan closing or before the start of construction, whichever occurs first, the State Director or the State Director's delegate will concur in the contract form, content, and execution if acceptable, by including the following paragraph at the end of the contract:

The Farmers Home Administration, as potential lender or insurer of funds to defray to costs of this contract, and without liability for any payments thereunder, hereby concurs in the form, content, and execution of this contract.

Date _____

FmHA Official

Title

(I) The requirements of § 1924.6 (a)(11)(iv) of this subpart apply to all contracts or subcontracts in excess of $10,000.

(iii) *Surety.* When multiple advances of loan or grant funds are utilized, surety that guarantees both payment and performance in the full amount of the contract will be provided in accordance with § 1924.6(a)(3)(ii) of this subpart. Exceptions to the surety requirements shall be governed by the following:

(A) In accordance with the guidance and recommendations of OMB Circulars A–102 and A–110, exceptions to the surety requirements of § 1924.6(a)(3)(ii) of this subpart will not be granted for nonprofit organization or public body applicants.

(B) For loans or grants to applicants other than non-profit organizations or public bodies that are within the State Director's approval authority, the State Director may, upon request of the borrower or grantee, grant exceptions to the surety requirements in accordance with the provisions of § 1924.6(a)(3)(iii) of this subpart. Before granting such an exception, however, the State Director should be provided the following information from the proposed contractor in order to fully evaluate the experience and capabilities of the contractor:

(*1*) A resume indicating the contractor's history, ability and experience.

(*2*) A current, dated, and signed financial statement indicating the payment status of the contractor's accounts and any contingent liabilities that may exist.

(*3*) A credit report (obtained at no expense to FmHA) attesting to the contractor's credit standing.

(*4*) A listing of trade references that could be contacted to substantiate the contractor's experience and good standing.

(*5*) Statements from owners for whom the contractor has done similar work, indicating the scope of the work and the owner's evaluation of the contractor's performance.

(C) For loans or grants to applicants other than non-profit organization or public bodies that are in excess of the State Director's approval authority, the

State Director may request National Office authorization to grant one of the exceptions to the surety requirements as indicated in § 1924.6(a)(3)(iii) of this subpart. The following information must be submitted with the request to the National Office:

(1) An explanation of why interim financing is not available.

(2) An explanation of why the proposed contractor cannot obtain surety bonds meeting the requirements of § 1924.6(a)(3)(ii) of this subpart.

(3) The information listed in paragraph (e)(1)(iii)(B) of this section.

(4) The drawings and specifications for the proposed project, together with the comments of the State architect/engineer.

(5) The applicant's written request for an exception.

(6) An explanation of why the requirements of § 1924.6(a)(3)(iii) (A) or (B) of this subpart cannot be met in those cases where the State Director requests authorization to grant an exception as indicated in § 1924.6(a)(3)(iii)(C) of this subpart. When such a request is made, the documentation required of the contractor under the provision must also be forwarded.

(7) The State Director's recommendation.

(D) Adequate steps will be taken to protect the interests of the borrower and the government in accordance with the payment provisions of § 1924.6(a)(12)(i) of this subpart and any alternative as outlined in § 1924.6(a)(3)(iii)(c) of this subpart.

(iv) *Contract cost breakdown.* In any case where the loan approval official feels it appropriate, and prior to the award or approval of any contract in which there is an identity of interest as defined in § 1924.4(i) of this subpart, the contractor and any subcontractor, material supplier or equipment lessor sharing an identity of interest must provide the applicant and FmHA with a trade-item cost breakdown of the proposed contract amount for evaluation. The cost of any surety as required by § 1944.222 (k) and (l) of Subpart E of Part 1944 of this chapter and § 1924.6(a)(3) of this subpart, or cost certification fee will be included in the proposed contract amount. Form FmHA 1924–13, "Estimate and Certificate of Actual Cost," which is available in all FmHA offices, may be used for this purpose.

(v) *Cost certification.* Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in § 1924.4(i) of this subpart, the borrower, contractor and any subcontractor, material supplier or equipment lessor having an identity of interest must each provide certification using Form FmHA 1924–13 as to the actual cost of the work performed in connection with the construction contract. All construction records must also be audited by an independent CPA, or by an LPA licensed on or before December 31, 1970, except for owner-builders not required to provide cost certification who must follow the instructions provided in § 1924.13(e)(2)(viii) of this subpart.

(A) Prior to the start of construction, the borrower, contractor and any subcontractor, material supplier or equipment lessor sharing an identity of interest must submit the accounting system that the borrower, contractor, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, it must allow for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted in accordance with paragraph (e)(1)(iv) of this section.

(B) The CPA or LPA will audit the books, accounts, and records of the borrower and the contractor (and any subcontractor, material supplier or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and meterials supplied in connection with the construction contract. Upon completion of construction and prior to final payment, the CPA or LPA will provide an unqualified opinion concerning the actual cost. The CPA or LPA must also certify that the examination has been made in accordance with generally accepted auditing standards, that to the best of the CPA or LPA's knowledge and belief the actual cost of construction performed under the contract is accurate and correct as represented, and that the CPA or LPA has no identity of interest with the borrower, contractor, architect, engineer, attorney, subcontractors, material suppliers or equipment lessors. FmHA reserves the right to determine, upon receipt, whether or not the certified statement of cost is satisfactory to FmHA.

(C) If the auditor is able to express an unqualified opinion the following format is suggested for the certification:

We have examined the books and records of (*contractor*) related to the development of the (*project name and case number*).

Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion the accompanying documentation, including Form FmHA 1924–13, "Estimate and Certificate of Actual Cost," presents fairly the actual cost in the amount of $———, of the (*project name*), in conformity with generally accepted accounting principles and the instructions issued by FmHA for the recognition of such costs.

Amounts paid and to be paid are shown as of the close of business———, 19—.

We certify that we have no financial interest in or with the borower, contactor, architect, engineer, attorney, subcontractors, material suppliers or equipment lessors, other than in the practice of our profession.

(D) Prior to final payment to anyone required to cost certify, a trade-item breakdown showing the actual cost compared to the estimated cost must be provided to the owner and FmHA. Form FmHA 1924–13 is the form of comparative breakdown that should be used, and contains the certifications required of the applicant and contractor prior to final payment. The amount for builder's general overhead and builder's profit shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(1)(iv) of this section for any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant. Contract change orders will be processed to adjust the contract amount downward prior to final payment to the contractor, if necessary, to assure that the amounts shown in the certificate of actual cost do not exceed the amounts represented in the contract cost breakdown.

(vi) *Method of payments.* Partial payments may be requested in accordance with the terms of the construction contract on Form FmHA 1924–18, "Partial Payment Estimate," or other professionally recognized form that contains the architect's certification, approval of the owner, and conditional acceptance of FmHA as shown in Form FmHA 1924–18.

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit D of Subpart E of Part 1944 of this chapter shall be used to inform the interim lender that FmHA will not close its loan until the project is substantially complete, ready for occupancy, evidence is furnished indicating that all bills have been paid or will be paid at loan closing for work completed on the project, all inspections have been completed and all required approvals have been obtained from municipal and governmental authorities having jurisdiction over the project. Upon presentation of proper partial

payment estimates approved by the applicant and accepted by FmHA, the interim lender may advance construction funds in accordance with the payment terms of the contract. It is suggested that partial payments not exceed 90 percent of the value of work in place and materials suitably stored on site.

(B) When interim financing is not available, payments will be made in accordance with § 1924.6(a)(12) of this subpart.

(vii) *Exception to competitive bidding.*—(A) *For all applicants.* An applicant may negotiate a construction contract provided the State Director grants an exception and documentation shows that:

(*1*) The contract price is competitive with other projects similar in construction and design being built in the area.

(*2*) The proposed contractor is experienced in construction of projects of similar size, scope, and complexity, and is recognized as a reliable builder.

(*3*) The proposed development work meets all requirements of this subpart.

(*4*) If appropriate for nonprofit organizations and public bodies, the applicant provides a copy of a duly authorized resolution by its governing body requesting FmHA to permit awarding the construction contract without formal bidding.

(*5*) The applicant is permitted by state law, local law and/or organizational by-laws to negotiate a construction contract.

(*6*) The requirements of paragraphs (e)(1) (ii), (iii), (iv) and (v) of this section are met.

(B) In considering an exception to competitive bidding, the following additional steps will be taken in all cases.

(*1*) If after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the costs are reasonable, an exception to competitive bidding will be granted.

(*2*) If after the full review by the State Office staff, the State Director determines that the negotiated contract price is not competitive with other similar projects in construction and design being built in the area, the applicant will be requested to competitively bid the construction of the project in accordance with paragraph (e)(1)(i) of this section.

(*3*) If there is no agreement by FmHA and the applicant as to the construction cost, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal in accordance with Subpart B of Part 1900 of this chapter.

(C) Any requests for exceptions to competitive bidding that are not covered in this section may be submitted to the National Office for consideration.

(viii) *Exception to contract method—public body.* With the approval of the National Office, the State Director may grant to a public body an exception to the requirement for using contract method construction under the following circumstances:

(A) The loan or grant is for repair or rehabilitation of existing facilities and it is not practicable to perform all work by the contract method.

(B) The applicant has the managerial ability and qualified employees necessary to complete the work successfully.

(C) That applicant submits a written request to the District Director indicating:

(*1*) The scope of work and construction timetable;

(*2*) What phases of work can be contracted and what cannot;

(*3*) Why is it not practicable to contract all phases;

(*4*) Management ability and employee qualifications for performing the work;

(*5*) Proposed method of fund control and frequency of payments;

(*6*) How changes in scope of work and construction timetable will be approved; and,

(*7*) Proposed method of certifying progress and requesting payments.

(D) The request, recommendations of the District Director, appropriate members of the State Office staff and the State Director and the application file will be sent to the National Office.

(2) *Owner-builder method.* This method of development is used only when requested by profit or limited profit RRH applicants when the applicant or any of its controlling principals (such as stockholders, members, partners other than limited partners, directors, or officers), are general contractors by profession, and will serve as the builder of the project without a written construction contract. The State Director may make an exception to the contract method of construction and authorize proceeding by the owner-builder method of construction in accordance with the provisions of this section if the amount of the loan(s) does not exceed the State Director's approval authority. For projects over the State Director's authority, prior written consent of the National Office is required. In such cases, the drawings, specifications, cost estimates, copy of the State Architect/Engineer's review and detailed information on the applicant's qualifications will be submitted to the National Office along with the State Director's recommendations.

(i) The applicant's request to construct a project by the owner-builder method of construction shall be in the form of a letter giving specific and detailed information concerning the owner-builder's proposal, and the qualifications and past experience of the owner-builder. The following information must be included with the request:

(A) A resume indicating the owner-builder's history, ability, and experience.

(B) Dated and signed financial statements (including balance sheets and statements of income and expense) from current and prior years indicating the payment status of the owner-builder's accounts and any contingent liabilities that may exist.

(C) A written, dated, and signed statement agreement to provide any funds necessary in excess of the applicant's contribution and the loan amount to complete the project.

(D) A credit report (obtained at no expense to FmHA) attesting to the owner-builder's credit standing.

(E) A listing of trade references that could be contacted to substantiate the owner-builder's experience and good standing.

(F) Statements from other persons for whom the owner-builder has done similar work, indicating the scope of the work and that person's evaluation of the owner-builder's performance.

(G) A current, dated and signed trade-item cost breakdown of the estimated total development cost of the project which has been prepared by the owner-builder. Form FmHA 1924–13 will be used for this purpose. If cost certification or cost estimation services are required by FmHA, the cost of such services may be included in the total development cost of the project. Any subcontractor, material supplier or equipment lessor sharing an identity of interest with the applicant/owner-builder as defined in § 1924.4(i) of this subpart must also provide a trade-item cost breakdown of the proposed amount.

(H) An example of the ledger-type accounting system that the owner-builder and/or the owner-builder's CPA or LPA proposes to set up and use in maintaining a running record of the actual cost of the project. In order to be acceptable, it must allow for a trade item basis comparison of the actual cost as compared to the estimated cost

submitted in accordance with paragraph (e)(2)(i)(G) of this section.

(I) A written, dated, and signed statement agreeing to permit U.S. Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, to have access to any books, documents, papers, and records which are directly pertinent to the specific Federal program for the purpose of making audit, examination, excerpts and transcriptions.

(ii) In order to grant an exception to the contract method of construction and proceed with the owner-builder method of construction, the State Director must determine that the following conditions exist:

(A) The applicant or at least one of its principals is a fully qualified and licensed (if necessary under applicable local law) builder by profession, has adequate experience in constructing the type of units proposed as well as projects of similar size, scope, and complexity and will be able to complete the work in accordance with the FmHA approved drawings and specifications.

(B) Based upon the information presented in the applicant's financial statements, the applicant is presently able and is likely to continue to be able to provide any funds necessary in excess of the applicant's contribution and the loan amount to complete the project.

(C) The total development cost of the project does not exceed that which is typical for similar type projects in the area. When the State Director determines it advisable, the State Director may require independent cost estimation by a professionally recognized cost estimation firm to help substantiate the total development cost of this project. The total development cost recognized by FmHA for each individual case will be determined by the MFH Coordinator with the advice of the State Architect.

(D) The owner-builder has provided sufficient information on all contracts or subcontracts in excess of $10,000 to permit compliance with § 1924.6(a)(11)(iv) of this subpart.

(iii) In addition to the requirements for the State Director to authorize the owner-builder method of construction as indicated in § 1924.13(e)(2)(i) and (ii) of this subpart, the following additional steps will be taken by the State Director.

(A) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the construction cost is reasonable, an exception to competitive bidding will be granted.

(B) If, after the full review by the State Office staff, the State Director determines that the construction cost is not competitive with other similar projects in construction and design being built in the area, the applicant will be requested to competitively bid the construction of the project in accordance with paragraph (e)(1)(i) of this section.

(C) If there is no agreement by FmHA and the applicant as to construction cost and the applicant is not agreeable to any of the aforementioned alternatives, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal, in accordance with Subpart B of Part 1900 of this chapter.

(iv) The development cost of the project may include a typical allowance for general overhead and a builder's profit. These amounts may be determined by local investigation and also from HUD data for the area. The applicant/owner-builder and any subcontractors, material suppliers and equipment lessors having or sharing an identity of interest with the applicant/owner-builder may not be permitted a builder's profit or general overhead which exceed the amounts represented on their cost breakdown.

(v) Under no circumstances will loan funds be used to pay the applicant or its stockholders, members, directors or officers, directly or indirectly, any profits from the construction of the project except a typical builder's fee for performing the services that would normally be performed by a general contractor under the contract method of construction. Discounts and rebates given the owner-builder in advance must be deducted before the invoices are paid. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate.

(vi) The plan and specifications must be specific and complete so that there is a clear understanding as to how the facility will be constructed and the materials that will be used.

(vii) When architectural services are required by § 1924.13(a) during the construction and warranty phases they must be provided by an architect who has no identity of interest with the applicant/owner-builder. The services to be rendered during the construction and warranty phases include, but are not limited to inspections, changes in the scope of project or work to be done, administration of construction accounts, rejection of work and materials not conforming to the FmHA approved drawings and specifications, and other appropriate service listed in § 1924.13(a)(5) (v) and (vi) of this subpart.

(viii) The applicant/owner-builder and any subcontractor, material supplier or equipment lessor sharing an identity of interest as defined in § 1924.4(i) of this subpart must each provide certification as to the actual cost of the work performed in connection with the construction of the project on Form FmHA 1924–13 prior to final payment. For all such projects involving a total development cost of more than $350,000, and any other project where the State Director determines it appropriate, the applicant/owner-builder must provide an audit of all construction records by an independent CPA (or by an LPA licensed on or before December 31, 1970).

(A) The CPA or LPA will audit the books, accounts and records of the applicant/owner-builder (and any subcontractor, material supplier or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with the construction of the project. Upon completion of construction and prior to final payment, the CPA or LPA will provide an unqualified opinion concerning the actual cost. The CPA or LPA must also certify that examination has been made in accordance with generally accepted auditing standards, that to the best of the CPA or LPA's knowledge and belief the actual cost of construction is accurate and correct as represented, and that the CPA or LPA has no identity of interest with the applicant/owner-builder, architect, engineer, attorney, subcontractors, material suppliers or equipment, lessors. FmHA reserves the right to determine, upon receipt, whether or not the certified statement of cost is satisfactory to FmHA.

(B) If the auditor is able to express an unqualified opinion, the following format is suggested for the certification:

We have examined the books and records of *(owner-builder)* realted to the development of the *(project name and case number)*.

Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records-and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the accompanying documentation, including Form FmHA 1924–13, "Estimate and Certificate of Actual Cost," presents fairly the actual cost in the amount of $——, of the ————*(project name)*

———, in conformity with generally accepted accounting principles and the instructions issued by FmHA for the recognition of such costs.

Amounts paid and to be paid are shown as of the close of business ———, 19—.

We certify that we have no financial interest in or with applicant/owner-builder, architect, engineer, attorney, subcontractors, material suppliers or equipment lessors, other than in the practice of our profession.

(C) Prior to final payment to anyone required to cost certify, FmHA must be provided with a certification and trade-item breakdown showing the actual cost compared to the estimated cost furnished in accordance with paragraph (e)(2)(i)(G) of this section. Form FmHA 1924–13 is the form of comparative breakdown that must be used, and contains the certification required of the applicant/owner-builder prior to final payment. The amount for builder's general overhead and builder's profit shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(2)(i)(G) of this section for the owner-builder or any contractor, subcontractor, material supplier or equipment lessor having or sharing an identity of interest with the applicant/owner-builder. Final payment to the owner-builder will be adjusted, if necessary, to assure that the amounts shown on the certificate of actual cost do not exceed the amounts represented on the cost breakdown.

(ix) Requests for payment for work performed by the owner-builder method, shall be permitted to the FmHA District Director for review and approval prior to each advance of funds in order to insure that funds are used for authorized purposes. Requests for payment shall be made on Form FmHA 1924–18 or other professionally recognized form containing the following certification to FmHA:

The undersigned certifies that the work has been carefully inspected and to the best of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.

(Name of Architect)

By: ———

(Title (Date)

Approved by Owner's Representative: By: —

(Title)

Accepted by FmHA Representative: By: ——

(Title)

The review and acceptance of partial payment estimates by FmHA does not attest to the correctness of the quantities shown or that the work has been performed in accordance with the plans and specifications.

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit D of Subpart E of Part 1944 of this chapter shall be used to inform the interim lender that FmHA will not close its loan until the project is complete, ready for occupancy, evidence is furnished indicating that all bills have been paid for work completed on the project, all inspections have been completed and all required approvals have been obtained from any governmental authorities having jurisdiction over the project. Upon presentation of proper partial payment estimates containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, certified by the applicant's architect, and accepted by FmHA, the interim lender may advance construction funds in accordance with the provisions of this section. It is suggested that the partial payment not exceed 90 percent of the value of work in place and material suitably stored on site.

(B) If interim financing is not available, partial payments not to exceed 90 percent of the value of work in place and materials suitably stored on site may be made to the owner-builder for that portion of the estimated cost of development guaranteed by a letter of credit or deposits meeting the requirements of § 1924.6(a)(3)(iii) (A), (B) or (C) of this subpart. Partial payments may not exceed 60 percent of the value of work in place in all other cases. The determination of the value of work in place will be based upon an application for payment containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, certified by the borrower's architect, and accepted by FmHA. Prior to receiving the first partial payment, the owner-builder must submit a schedule of prices or values of the various trades or phases of the work aggregating the total development cost of the project as required in § 1924.13(e)(2)(i) (G) and (H) of this subpart. Each application for payment must be based upon this schedule, and show the total amount owed and paid to date for materials and labor procured in connection with the project. With each application for payment, the owner-builder must also submit evidence showing how the requested partial payment is to be applied, evidence showing that previous partial payments were properly applied, and a signed statement from the applicant's attorney, title insurance company, or local official in charge of recording documents certifying that the public records have been searched and that there are no liens of record. When the District Director has reason to believe that partial payments may not be applied properly, checks will be made payable to persons who furnish materials and labor for eligible purposes in connection with the project.

(x) Under no circumstances shall funds be released for final payment or to pay any items of the builder's profit until the project is 100 percent complete, ready for occupancy, and the owner-builder has completed and properly executed Form FmHA 1924–13 or complied with the cost certification procedures of § 1924.13(e)(2)(viii) of this subpart.

§§ 1924.14—1924.48 [Reserved]

§ 1924.49 State Supplements.

State Supplements or policies will not be issued or adopted to either supplement or set requirements different from those of this subpart, unless specifically authorized in this subpart, without prior written approval of the National Office.

§ 1924.50 OMB control number.

Collection of information requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB control number *0575–0042.*

EXHIBIT A—ESTIMATED BREAKDOWN OF DWELLING COSTS FOR ESTIMATING PARTIAL PAYMENTS

[In percent]

	With slab on grade	With crawl space	With basement
1. Excavation	3	5	6
2. Footings, foundations columns	8	8	11
3. Floor slab or framing	6	4	4
4. Subflooring	0	1	1
5. Wall framing, sheathing	7	7	6
6. Roof and ceiling framing, sheathing	6	6	5
7. Roofing	5	5	4
8. Siding, exterior trim, porches	7	7	6
9. Windows and exterior doors	9	9	8
10. Plumbing—roughed in	3	2	3
11. Sewage disposal	1	1	1
12. Heating—roughed in	1	1	1
13. Electrical—roughed in	2	2	2
14. Insulation	2	2	2
15. Dry wall or plaster	8	8	7
16. Basement or porch floor, steps	1	1	6
17. Heating—finished	3	3	3
18. Flooring	6	6	5
19. Interior carpentry, trim, doors	6	6	5
20. Cabinets and counter tops	1	1	1
21. Interior painting	4	4	3
22. Exterior painting	1	1	1

EXHIBIT A—ESTIMATED BREAKDOWN OF DWELLING COSTS FOR ESTIMATING PARTIAL PAYMENTS—Continued

[In percent]

	With slab on grade	With crawl space	With basement
23. Plumbing—complete fixtures	4	4	3
24. Electrical—complete fixtures	1	1	1
25. Finish hardware	1	1	1
26. Gutters and downspouts	1	1	1
27. Grading, paving, landscaping	3	3	3
Total	100	100	100

Exhibit B—Requirements for Modular Panelized Housing Units

For the benefit of FmHA this Exhibit prescribes evaluation, acceptance, inspection and certification procedures formodular/panelized housing units proposed for use in Farmers Home Administration (FmHA) Rural Housing programs. It applies to proposed development packages provided either under a contract between an FmHA borrower and a single contractor or under a conditional commitment. This Exhibit also describes the use of background information available through the Department of Housing and Urban Development (HUD) for analysis of manufactured products. This Exhibit also applies to the evaluation of manufactured farm service buildings in paragraph XI, below. For the purpose of this Exhibit, County Supervisor and County Office also mean District Director and District Office, respectively.

I. Applicable Standards and Manuals.

A. The HUD Handbook 4950.1, Technical Suitability of Products Program Technical and Processing Procedures, must be followed by housing manufacturers to obtain acceptance of their products. Acceptance documents issued by HUD include: Structural Engineering Bulletins (SEB) on a national basis, Area Letters of Acceptance (ALA) which when accepted by all Area HUD Offices in a HUD region will, in essence, become Regional Letters of Acceptance (RLA), Truss Connector Bulletins (TCB): and, Mechanical Engineering Bulletins (MEB). These documents as well as the Use of Material Bulletins (UM) and Materials Release Bulletins (MR) are addendums to the HUD Minimum Property Standards (MPS). Under handbook guidelines, HUD also examines state agency regulations concerning design, construction and labeling of modular/panelized housing units and designates those states having procedures acceptable for use under HUD programs. Modular/panelized housing produced in these states is called *Category III* and is considered technically suitable for use without further structural analysis.

B. All State FmHA Offices should maintain a close working relationship with each HUD office in their jurisdiction to assure coordination. Any deviations in structure, materials or design from HUD acceptance documents must comply with one of the other applicable development standards.

II. Modular Housing Units that Require Factory Inspections.

Only those types which cannot be completely inspected on site are required to obtain acceptance from HUD. Those that receive acceptance will be periodically factory inspected by HUD or HUD's designated agency, usually about every 6 months.

III. Panelized Housing Units that Do Not Require Factory Inspections.

A. Housing completely assembled on the building site does not require HUD acceptance. This includes housing that is manufactured but is assembled on the site such as: precut pieces, log wall houses, trussed roof rafters or floor trusses; open panel walls, and other types that can be completely inspected on site.

B. Housing that is assembled in local materials dealers' yards for moving to local sites and to be purchased by an FmHA applicant, will be inspected during construction in the yard by the local FmHA County representative.These units must be constructed according to the applicable development standard and not transported out of the local FmHA County Office jurisdiction. The inspection must be recorded on Form FmHA 1924–12, "Inspection Report."

IV. Manufacturer's Actions Required for Submissions to FmHA are listed in Attachment 1 to this Exhibit B.

V. State FmHA Office Actions when Manufacturing Facilities are in its Jurisdiction. The State Office, upon receipt of manufacturer's submission, must:

A. Determine that the unit structural system has been accepted by HUD as appropriate under HUD Handbook 4950.1 requirements.

B. Review the thermal characteristics and approach of the calculations to determine actions to be taken in compliance with paragraph IV C of Exhibit D of this subpart.

C. Review the proposal for compliance with § 1924.5(d)(1) of this subpart.

D. Determine that the prereqaisites for consideration of acceptance by FmHA are met. The prerequisites include all of the following:

1. A current acceptance document from HUD (SEB, RLA, ALA), except for Category III housing (modular/panelized housing that does not have to have a Structural Engineering Bulletin as designated by HUD). In Category III states, the state government requirements for manufactured housing must be followed.

2. A current HUD Factory Inspection Report, Form No. 2051m, or in the case of Category III housing, a copy of the inspection report from the state government or accepted third party performing the factory inspection. Each report must be made by HUD or a HUD authorized agency, and must be no older than 6 months.

3. A letter from the manufacturer requesting a review for acceptance. Enclosed with the letter shall be all the information listed in Attachment 1 to this Exhibit B.

E. Issue acceptance letters to the manufacturer stating the conditions of acceptance in the format of Attachment 2 to this Exhibit B. The letter shall have an attachment listing all models accepted in the format of Attachment 3 to this Exhibit B. A copy of the acceptance letter and list of models shall be sent to each County Office in the state and, when requested by the manufacturer, to each other FmHA State Office in which the product is to be marketed

F. After initial review of a submission, maintain a master file of accepted manufacturers and models and review the file twice yearly to determine the currency of the factory inspection reports and HUD or state government acceptance documents.

G. Notify manufacturers of overdue factory inspection reports, for acceptance of documents review and updating, using the format of Attachment 4 to this Exhibit B. Accompanying the notification will be a temporary acceptance sheet (Attachment 3 to this Exhibit B) indicating to the manufacturer that the company models have temporary acceptance for 60 days. If the manufacturer provides evidence that a review is being processed by HUD, a maximum of an additional 90 days may be granted. Otherwise, the acceptance shall terminate on the last extension date and it will be necessary for the manufacturer to resubmit as if for initial acceptance.

H. Distribute a list of added models, deleted models, or notice of deletion of any manufacturer's product to the County Offices and other State FmHA Offices as necessary.

I. Issue an initial supply of Manufacturer's and Builder's Certification forms (Attachment 5 to this Exhibit B) to each existing and newly accepted manufacturer. Manufacturers are to duplicate this form as necessary in their market areas.

J. Resolve any problems with the manufacturer, as reported by the County Office. Action may include coordination, FmHA plant inspections or cancellation of acceptance letters when problems persist.

VI. County Office Actions:

A. When an application is received involving any of the manufacturer's products on the accepted list, the County Office FmHA authorized personnel will:

1. Review the drawings and description of materials described in paragraphs A and B of Attachment 1 to this Exhibit B. The floor plans and elevations must be identifiable with the model listed in the accepted list issued by the State Office.

2. Require the builder/dealer or manufacturer to provide any drawings necessary to adapt the house to the site conditions where the house will be located.

3. Require site plan drawing such as those illustrated in Attachments 1 and 2 to Exhibit C of this subpart (available in any FmHA office).

4. Inspect and identify the model delivered against the manufacturer's certification and the accepted drawings and description of materials before the unit has been set on the foundation.

5. Require the builder/dealer to certify that the work for which the builder/dealer is responsible has been erected in compliance with the applicable development standard. This certification will be completed on a copy of Attachment 5 to this Exhibit B, and filed in County Office case file.

6. Observe any noncompliance with the applicable development standard or with paragraphs IV and V of this Exhibit B. In this respect:

a. Minor noncompliance will be resolved by the manufacturer through the builder/dealer. In cases where there is no builder/dealer, the County Office may resolve such issues with the manufacturer directly.

b. Noncompliance that cannot be resolved at the County Office level will be reported to the State Office.

7. Inspect manufactured housing according to § 1924.8(d) of this subpart.

8. Be aware that the accepted list may include many models from which loan applicants may choose. No changes from accepted model designs are permitted. The model selected by an applicant should be appropriate to the needs of that particular family in accordance with Subpart A of Part 1944 of this chapter.

VII. Noncompliance Issues.

A. When minor issues are noted, the County Office will attempt to resolve them as described above. If they cannot be resolved locally, they will be referred to the State Office. When any issues cannot be resolved at State Office level, the National Office Program Support Staff (PSS) will be contacted for guidance.

B. The National Office PSS coordinating with HUD, will take the appropriate actions to resolve the issues reported.

C. Manufacturers and builder/dealers must be aware that if the FmHA inspector finds any of the following conditions, the inspector may refuse to accept the construction until corrections have been made:

1. Evidence of noncompliance with any option of the method described in the HUD—SEB, RLA, or ALA.

2. Faulty shop fabrication, including surface defects.

3. Damage to shop fabricated items or materials due to transportation, improper storage, handling or assembly operation.

4. Unsatisfactory field or site workmanship.

VIII. Actions by Other State Offices. When a State Office receives a copy of the accepted list from the State Office in which a manufacturing plant is located, it will:

A. Maintain a file, by manufacturer, of each accepted list of models.

B. Provide copies of the accepted list of models to each County Office in the State.

C. Request a copy of the drawings, description of materials, and thermal calculations to determine compliance with the thermal requirements for the county in which the house is to be located according to Exhibit D of this subpart.

D. Check to see that County Offices within the state will act as prescribed in paragraph VI of this Exhibit B.

E. When two or more State Offices have different interpretations of the acceptability of a particular model, there must be an agreement between the states so that they will have the same requirements. If the states cannot agree, the National Office PSS will be consulted for guidance.

IX. Subsequent Review.

FmHA will make periodic reviews of houses, both site-built and houses manufactured offsite, to determine acceptability of the finished product. If, in the judgment of the FmHA, the product has failed to perform satisfactorily, acceptance may be withdrawn. The State Director will notify the manufacturer and/or the builder/dealer of the reasons for the withdrawal no later than the time of withdrawal. Negotiations for corrections will be carried out by the County Office with the assistance of the State Office or National Office, as necessary.

X. Materials and Products Acceptance—Material Release Bulletins, Use of Materials Bulletins, Manufacturer's Instructions.

A. The Materials Release (MR) and Use of Materials Bulletins (UM) provide for the national acceptance of specific nonstandard materials and products not covered in the current HUD MPS.

B. When contractors or builders intend to use products or materials not listed as approved in the MPS, the FmHA personnel reviewing or concerned with the approval of construction in which the product is to be used, will require the contractor or builder to furnish a Materials Release Bulletin or Use of Materials Bulletin on the materials or products. If the product has been accepted, the supplier should be able to obtain the bulletin for the contractor or builder from the manufacturer. These bulletins describe the products or materials limitations to use, method of installing or applying, approved type of fasteners, if used, etc. and will provide the contractor with instructions as to proper installation or application.

C. When FmHA personnel are unfamiliar with any materials or products which have been accepted in the MPS, they will request the contractor or builder to furnish the manufacturer's instructions to assure that the materials or products are properly installed or applied. Any questions on any product that cannot be resolved in the County Office should be referred to the State Office. When the question cannot be resolved at the State Office level, the National Office PSS should be consulted for guidance.

XI. Manufactured Farm Service Buildings.

A. When a loan application is received that involves a manufactured building or special equipment that cannot be completely inspected on the site, the local State Land Grant University recommendations should be requested.

B. When the County Office questions the advisability of making a loan on a manufactured building, the State Office should also be consulted.

C. The State Office should review and make recommendations to the County Office. If doubt still exists, the National Office PSS should be consulted for guidance.

Required Information for Acceptance of Modular/Panelized Housing Units

The manufacturer or sponsor of modular/panelized housing units wishing to participate in the Farmers Home Administration (FmHA) Rural Housing programs shall submit to the FmHA State Director having jurisdiction over the state in which the proposed housing is to be manufactured, two complete sets of the information listed below for evaluation. Submissions not including all the information requested will be returned.

A. *Statements:*

1. Name and location of organization, including titles and names of its principal officers.

2. A brief description of plant facilities.

3. Extent of intended market distribution, including a list of any other states in which units will be marketed.

4. The method of quality control during site installation.

5. A copy of the applicable current HUD Structural Engineering Bulletin (SEB), Regional Letter of Acceptance (RLA), or Area Letter of Acceptance (ALA).

6. A current factory inspection report made within 6 months by HUD or HUD authorized agency.

7. Name and address of any third party inspection agency.

8. Location of nearest assembled product for inspection.

9. Field manuals for site installation and/or set-up procedures.

10. Specifications or descriptions of materials using either Form FmHA 1924–2, (HUD–FHA Form 2005), "Description of Materials," including sizes, species and grade of all building and finishing materials. All blanks should be filled and additional sheets may be attached as well as equipment manufacturer's brochures. Use an asterisk (*) to denote all items of onsite construction that will be provided by the builder-dealer. The builder-dealer must complete a form for the builder-dealer's portion of the work. Use N/A in any blank which is not applicable.

11. Names and addresses of other public and private agencies which have rendered or been asked to render a technical suitability or acceptance determination with respect to the products or structural methods employed.

12. Written certification that construction drawings and specifications conform with the applicable development standard.

13. Any other pertinent information.

14. An index of all documents submitted.

B. *Working Drawings.* For emphasis as to the details required for modular/panelized housing proposals, the following items are listed in addition to and in more detail than the requirements in Exhibit C of this subpart. In some cases, the drawing presentation sheets may be required to be reduced to 200 mm by 266 mm (8 x 10½ inches) sheet size:

1. Foundation and/or Basement Plan. This plan shall include anchorage details, exterior and interior dimensions, typical footings, wall thickness, pilaster sizes and locations, column or pier sizes and locations and girders required to support the structures. Show location of all equipment (furnace, water heater, laundry tubs, sump, etc.) floor drains, electrical outlets, electrical entrance panels, and all doors and windows or crawl space vents with all sizes indicated.

2. Floor Plans of all levels. Show square footage of each habitable room with square footage of each area of natural light and ventilation. In addition, a design sketch scaled properly to illustrate a typical furniture arrangement for all habitable levels is required to indicate intended occupancy functions of the design. A window and door schedule should also be provided indicating glazed size, sash size, and thermal conductance of each type.

3. All exterior elevations including opening and sizes; wall finish materials, flashing, finish grades intended, depth of footings when known, finish floor, ceiling heights, roof slope, location of downspouts, gutters, vents for both structural spaces and for equipment. Indicate construction joint locations and details of connections between sections, modules or components.

4. Building cross sections showing size and spaces of all framing members from lowest member (bottom of footing) to highest point of roof (ridge) plus;

(a) Type of material and method of application of all covering materials, such as subflooring, combination subflooring and underlayment, sheathing, interior and exterior finishes;

(b) Complete details including computations of trussed rafter systems with the architect/engineer's stamp of those responsible for the design.

(c) Details of insulation and vapor barrier installation and attic ventilation. If the thermal characteristics to be provided are determined according to optional method for overall structure performance allowed in Exhibit D of this subpart, the submission and complete engineering calculations with all details of construction shall be sent to Administrator, Attn. PSS, FmHA Washington, D.C. 20250, for analysis as prescribed in paragraph IV C of Exhibit D of this subpart.

(d) Special details as necessary to show any special features of construction, including method of fabricating, erection, joining, and finishing of all elements; and

(e) Details and sections of stairways including all critical dimensions, such as, riser, run and headroom.

5. Interior elevations of kitchen cabinets and bathroom elevations with schedule of all shelf, counter-top and drawer footage. Indicate whether kitchen cabinets are to be custom made for each model or made for any model by a cabinet manufacturing company.

6. Plumbing schematics, including pipe materials, sizes and plumbing code compliance.

7. Heating plan, including heat loss of each room, is needed for heating systems, sizings and capacities, forced air, electric baseboard, or electric space heaters and, if applicable, heat gain. For forced air systems, include supply and return duct layout and location of appropriate diffusers.

8. Electrical plan, including circuit chart or diagram.

9. Any other pertinent facts or drawings that will better explain why and how certain unusual materials or structural methods are employed.

John Dough Manufacturing Company,
3444 Residence Avenue,
Elkton, Indiana 00051.

Dear Sirs: Athough the documents submitted to this office have only received a cursory review, they appear to be in substantial compliance to qualify your firm for the type of acceptance indicated on the attached list.

The acceptance being issued is subject to this letter of conditions, compliance with HUD Handbook 4950.1 Technical Suitability of Products Program Technical and Processing Procedures, compliance with Farmer Home Administration (FmHA) Thermal Performance Construction Standards, and compliance with the conditions set forth in the HUD acceptance document, if applicable, whose number appears on the acceptance.

The manufacturer and the authorized builder-dealer bear the responsibility of complying with the above, the exhibits submitted and the applicable development standards.

The manufacturer and/or builder-dealer also shall:

1. Provide positive identification of the modular unit by model, date of manufacture and factory in which the unit was manufactured.

2. Furnish with each home to be financed by FmHA in———(State)———, a written certificate (Attachment 5 to this Exhibit B) endorsed by the builder-dealer certifying that all requirements have been satisfied.

3. Furnish the local FmHA County Supervisor with a complete set of drawings including site plans, description of materials, structural engineering bulletins when applicable in the state, and documentation relating to the manufacture, transportation, erection, and installation for each model of modular/panelized housing to be financed in the county. Electrical, plumbing and heating plans must be furnished for each model in addition to the basic drawings. Floor plans and elevation drawings may vary from those listed in Attachment 1 of Exhibit B to FmHA Instruction 1924–A to reflect each of the manufacturer's models provided they are in compliance with the applicable development standard and the FmHA Thermal Performance Construction Standards and provided they have been accepted and listed in this state's approval of manufactured structures. No field alterations to the accepted models will be allowed.

4. Furnish, when required by the County Supervisor, foundation drawings (including special foundation design considerations when the unit is to be erected in seismic zones 1, 2 or 3) adapting the modular home to any unusual site conditions needing information additional to that furnished by the standard drawings.

5. Furnish the County Office with a copy of inspection reports of the manufacturing facilities immediately after the inspection reports have been completed.

6. Allow FmHA personnel to inspect the manufacturing facilities at any time and furnish all FmHA State Offices, where acceptance has been obtained, with a copy of any FmHA inspection reports immediately after the inspection reports have been completed.

7. In the event there are major changes to the submitted drawings, obtain approval under the HUD Technical Suitability of Products Program and submit verification of this approval to the County Office for listing on the state's accepted list. Any modular home shipped with major changes incorporated, without such changes on file at the County Office may be rejected.

(Add state and local requirements appropriate to this letter of conditions.)

This acceptance may be subject to corrective action when deficiencies are noted in the product, field inspections, manufacturing facilities, or when there is noncompliance with the provisions of the HUD Technical Suitability of Products Program.

The inclusion of these models on the accepted list is based only on the material and structural aspects of the manufactured units. Final determination of acceptability rests with FmHA personnel. Other factors relating to the property in its entirety such as appraisal, location, sustained market acceptance, architectural planning and appeal, thermal qualities, mechanical and electrical equipment, etc., must be considered in the final determination.

Your cooperation in this acceptance program is appreciated.

Sincerely,

State Director

Attachment 3

Date ——— File No. ———

Acceptance of Modular/Panelized Housing Units

(Based on HUD Handbook 4950.1)

Manufacturer:

——— Acceptance Document ———
——— Type of Acceptance:
——— —— Regular
——— —— Temporary, Expires ———
Plant Locations: ———
Date of Latest Plans Reviewed ———
Date of Latest Factory Inspection ———
Acceptance Document Review Date ———

FmHA Instruction 1924–A, Exhibit D

Thermal Performance Construction Standards

State Office Review

———

(Exh. D, IV, C, 1, a or b)
National Office Review

———

(Exh. D, IV, C, 2)

Maximum Winter Degree Days for State ——— Walls R ———
Glazing/Gross Wall Area Ratio ———%
Ceilings R ———
Glazing ——— Pane(s)
Floor R ———
Glazing ——— Pane(s)
Insulated Door ———
Wood and Storm ———
Insulated Door ———
Wood and Storm ———

———

Models Accepted:

Attachment 4

John Dough Manufacturing Company,
3444 Residence Avenue,
Elktown, Indiana 00051.

Dear Sirs: As set forth in acceptance letters issued by this office, acceptance of modular/panelized homes in this state is based on HUD's Technical Suitability of Products Program and the conditions stated in the acceptance letter. Your file has been reviewed and the following has been noted.

—— —— An inspection report of your manufacturing facilities is overdue. Inspections are required twice yearly. The last inspection report on file at this office is dated ———.

——— Your Structural Engineering Bulletin No. —— dated —— has not been reviewed by HUD. Reviews are generally required every three years. Temporary acceptance will be considered when you provide evidence that the review documents have been submitted to HUD.

——— The drawings being used for the construction of your homes are not listed in your Structural Engineering Bulletins. Drawings used in the field should be those upon which the Structural Engineering Bulletin was issued.

——— There have been —— revisions to the development standards since ———, the date of the last drawings we have on file for your homes. It is recommended that you review the revisions to ascertain whether your drawings need to be updated.

Please submit a written response and appropriate documents for the above items within ——— days, or your product will be removed from the accepted list until your firm can again qualify. If you have any problems furnishing the above within the time stated, please contact this office.

We look forward to receiving the materials indicated so that your firm's listing may be continued.

Sincerely,

State Director

Attachment 5

Certification by Manufacturer

Delivery location of structure for component ————————

This is to certify that
Model: ————,
Serial # ————,
manufactured ———
(date) ———, 19 ——— in
—— (location) ———
and being sold to ———
(name of ————
builder-dealer or borrower) has been manufactured in accordance with drawings and specifications on file in the FmHA State Office and that the construction complies with applicable development standards, except as modified by HUD Acceptance Document (SEB, RLA, ALA,)
NO. ————,
dated ————,
and in compliance with the FmHA Thermal Performance Construction Standards.

Date

Signature of Authorized Official

Title

Certification by Builder-Dealer

——— (Name of
builder-dealer) ———
certifies that the foundation and other on-site work has been constructed in accordance with the drawings and specifications and the above structure or component has been erected, installed or applied in compliance with the applicable development standards.

It is understood that the manufacturer's certification does not relieve the builder/dealer of responsibility under the terms of the builder's warranty required by the National Housing Act.

Date

Signature of Authorized Official

Title

Exhibit C—Guide for Drawing and Specifications

This Exhibit applies to all new buildings to be constructed, including all single family housing and related facilities and, as applicable, farm housing and farm service buildings.

I. GENERAL: The documents recommended in this Exhibit correspond with the list of Exhibits in Chapter 3 of the Department of Housing and Urban Development (HUD) "Architectural Handbook for Building Single-Family Dwellings" No. 4145.2. This Exhibit may be used as a public handout and shall be used as a guide for drawings and specifications to be submitted in support of any type of application involving construction of major new buildings or extensive rehabilitation, alterations or additions to existing buildings. Descriptions of work for minor alterations or repairs need pertain only to work to be done and may be in narrative form when acceptable to the County Supervisor. Complete and accurate drawings and specifications are necessary:

A. To determine the acceptability of the proposed development,

B. To determine compliance with the applicable standards and codes,

C. To prepare a cost estimate, and

D. To provide a basis for inspections and the builder's warranty.

II. DRAWINGS FOR A SPECIFIC STRUCTURE: Drawings for individual single dwellings shall provide at least the following:

A. *Plot Plan.* Refer to Example Plot Plan No. 1, Attachment 1 to this Exhibit C (available in any FmHA office). Ratio: 1:240 (1" = 20') (at scale, 1" = 20' or 1/16" = 1'0" minimum):

1. Lot and block number.

2. Dimensions of plot and north point.

3. Dimensions of front, rear and side yards.

4. Location and dimensions of garage, carport and other accessory buildings.

5. Location and sizes of walks, driveways and approaches.

6. Location and sizes of steps, terraces, porches, fences and retaining walls.

7. Location and dimensions of easements and established setback requirements, if any.

8. Elevations at the following points: (a) first floor of dwelling and floor of garage, carport and other accessory building; (b) finish curb or crown of street at points of extension of lot lines; (c) finish grade elevation at each principal corner of structure; (d) finish grade at bottom of drainage swales at extension of each side of structure as feasible.

9. The following additional elevations, as applicable, if the topography of the site or the design of the structure is such that special grading, drainage or foundations may be necessary. Examples are irregular or steeply sloping sites, filled areas on sites, or multi-level structure designs; (a) finish and existing grade elevations at each corner of the plot; (b) existing and finish grade at each principal corner of dwelling; (c) finish grade at both sides of abrupt changes of grade such as retaining walls, slopes, etc.; (d) other elevations that may be necessary to show grading and drainage.

10. Indication of type and approximate location of drainage swales.

11. When an individual water supply and/or sewage system is proposed, drawings, specifications and other items prescribed in Paragraph V of this Exhibit.

B. *Floor Plans.*

1. Scale, 1:50 (¼" = 1'0").

2. Floor plan of each floor and basement, if any. Show typical furniture locations to suggest intended use of each habitable space.

3. Plan of all attached terraces and porches, and of garage or carport.

4. If dwelling is of crawl-space type, a separate foundation plan. Slab-type foundation may be shown on sections.

5. Direction, size and spacing of all floor and ceiling framing members, girders, columns or piers.

6. Location of all partitions and indication of door sizes, and direction of door swing.

7. Location and size of all permanently installed construction and equipment such as kitchen cabinets, closets, storage shelving, plumbing fixtures, water heaters, etc. Details of kitchen cabinets may be on separate drawing.

8. Location and symbols of all electrical equipment, including switches, outlets, fixtures, etc.

9. Heating system on separate drawing, or when it may be shown clearly it may be part of the floor or basement plan showing: (a) layout of system; (b) location and size of ducts, piping, registers, radiators, etc.; (c) location of heating unit and room thermostat; (d) total calculated heat loss of dwelling including heat loss through all vertical surfaces, ceiling and floor. When a duct or piped distribution system is used, calculated heat loss of each heated space is required.

10. Cooling system, on separate drawings or, as part of heating plan, floor or basement plan showing: (a) layout of system; (b) location and size of ducts, registers, compressors, coils, etc.; (c) heat gain calculations, including estimated heat gain for each space conditioned; (d) model number and Btu capacity of equipment or units in accordance with applicable Air Conditioning and Refrigeration Institute (ARI) or American Society of Refrigerating Engineers (ASRE) Standard; (e) Btu capacity and total kilowatt (KW) input at stated local design conditions; (f) if room or zone conditioners are used, provide location, size and installation details.

C. *Exterior Elevations.*

1. Scale, 1:50 (¼" = 1'0"). Elevations, other than main elevation, which contain no special details may be drawn at 1:100 (⅛" = 1'0").

2. Front, rear and both side elevations, and elevations of any interior courts.
3. Windows and doors—indicate size unless separately scheduled or shown on floor plan.
4. Wall finish materials where more than one type is used.
5. Depth of wall footings, foundations, or piers, if stepped or at more than one level.
6. Finish floor lines.
7. Finish grade lines at buildings.

D. *Details and Sections.*

1. Section through exterior wall showing all details of construction from footings to highest point of road. Where more than one type of wall material is used, show each type. Scale 1:25 (⅜"=1'0") minimum.
2. Section through any portion of dwelling where rooms are situated at various levels or where finished attic is proposed, Scale, 1:50 (¼"=1'0") minimum.
3. Section through stair wells, landings, and stairs, including headroom clearances and surrounding framing. Scale, 1:50 (¼"=1'0") minimum.
4. Details of roof trusses, if proposed, including connections and stress or test data with seal of architect or engineer responsible. Scale of connections, 1:25 (⅜"=1'0") minimum.
5. Elevation and section through fireplace. Scale, 1:25 (⅜"=1'0") minimum.
6. Elevations and section through kitchen cabinets, indicating shelving. Scale, 1:50 (¼"=1'0") minimum.
7. Sections and details of all critical construction points, fastening systems, anchorage methods, special structural items or special millwork. Scale as necesaary to provide information, 1:25 (⅜"=1'0") minimum.

III. MASTER DRAWINGS FOR GROUP STRUCTURES. Drawings for a group of structures (such as for several conditional commitments) may be submitted in lieu of drawings for each individual property when a number of applications are simultaneously submitted involving repetition of the same type structure.

A. *Master plot plan* shall include the following:

1. Scale which will provide the following information in a clear and legible manner.
2. North point.
3. Location and width of streets and rights-of-way.
4. Location and dimensions of all easements.
5. Dimensions of each lot.
6. Location of each dwelling on lot with basic dimensions.
7. Dimensions of front, rear and side yards.
8. Location and dimensions of garage, carports and other accessory buildings.
9. Identification of each lot by number and indication of basic plan and elevation type.
10. Location of walks, driveways and other permanent improvements.

B. *Typical plot plan* for each basic type dwelling may be submitted in lieu of fully detailing each lot on master plot plan, when topography and lot arrangements present no individual planning or construction problems.

1. Information not shown on the typical plot plan shall be included on the master plot plan

2. Typical plot plans shall not be used for corner lots, lots with irregular boundaries, lots involving pronounced topographic variations or other lots where individual detailing is necessary.
3. Location of dwelling on typical lot and full dimensions.
4. Location and dimensions of all typical improvements, such as garage, carport, accessory buildings, walks, drives, steps, porches, terraces, trees, shrubs, retaining walls, fences, etc.

C. *Grading* may be shown on separate grading plan or on the master plot plan. Scale shall be sufficiently large to provide the following information in clear and legible manner:

1. Contours of existing grade at intervals of not more than 1.524 m (5 feet). Intervals less the 1.524 m (5 feet) may be required when indicated by the character of the topography.
2. Location of house and accessory buildings on each lot.
3. Identification of each lot by number.
4. Elevations in accordance with individual plot plan including bench mark and datum or, in lieu of finish grade elevations, contours of proposed finish grading may be submitted. Contour intervals selected shall be appropriate to the topography of the site.
5. Lot grading shall be shown by indicating protective slopes and approximate location of drainage swales.
6. Location of drainage outfall, if any drainage is not to a street.

D. *Floor plans, elevations, sections and details* shall be submitted for each basic plan. Alternate elevations to basic plan may be shown at scale, 1:100 (⅛"=1'0").

IV. SPECIFICATIONS. Form FmHA 1924–2, "Description of Materials," or other acceptable and comparable descriptions of all materials forms shall be submitted with the drawings. The forms shall be completed in accordance with the instructions on Form FmHA 1924–2 to describe the materials to be used in the construction.

A. Form FmHA 1924–2 may be reproduced if size, format and printed text are identical to the current official form. When it is reproduced, the following deletions must be made:

1. All lines indicating FmHA form numbers or other Government agency initials and/or numbers, and
2. The United States Government Printing Office (GPO) imprint and reference number.

B. The material identification shall be in sufficient detail to fully describe the material, size, grade and when applicable, manufacturer's model or identification numbers. When necessary, additional sheets must be attached as well as manufacturer's specification sheets for equipment and/or special materials, such as aluminum siding or carpeting.

V. INDIVIDUAL WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS. When an individual water and/or sewage disposal system is proposed, the following additional information must be submitted:

A. *Approval and recommendations of other authorities.*

1. A written opinion by the health authority having jurisdiction that the site is suitable and acceptable for the proposed systems(s) and,

2. If available, a soils report from the local USDA-Soil Conservation Service and any recommendations they may have.
3. Approval of appropriate environmental control authority.
4. A signature of the health authority on the plot plan indicating approval of the design of the proposed system.

B. *Plot Plan.* Refer to Example Plot Plan No. 2, Attachment 2 to this Exhibit C (available in any FmHA office).

1. Location and size of septic tank, distribution box, absorption field or bed, seepage pits and other essential parts of the sewage disposal system and distance to all individual wells, open streams or drainageways.
2. Location of well, service line and other essential parts of the water supply system and distance to other wells and/or sewage disposal systems.
3. Exact location of individual systems (water or sewage) on adjacent properties and description of system, if available.

C. Construction details of all component parts of individual water supply and sewage disposal systems shall clearly indicate material, equipment and construction. Extra sheets and drawings should be added as necessary to fully explain the proposed installation.

Exhibit D—Thermal Performance Construction Standards

I. *Purpose:* This Exhibit prescribes thermal performance construction standards to be used in all housing loan and grant programs. These requirements shall supersede the thermal performance requirements in any of the development standards in § 1924.4(h) of this subpart.

II. *Policy:* All loan or grant applications involving new construction and all applications for conditional commitments shall have drawings and specifications prepared to comply with paragraphs IV A or IV C and D of this Exhibit. All existing dwellings to be bought with FmHA loan funds shall be considered in accordance with paragraphs IV B or C of this Exhibit.

III. *Definitions:*

A. *British thermal unit* (Btu) means the quantity of heat required to raise the temperature of one pound (.4535 Kg.) of water by one degree Fahrenheit (F). For example, one Btu is the amount of heat needed to raise the temperature of one pound of water from 59 degrees F to 60 degrees F.

B. *Glazing* is the material set into a sash or door when used as a natural light source and/or for occupant's views of the outdoors.

C. *"R" value,* thermal resistence, is a unit of measure of the ability to resist heat flow. The higher the R value, the higher the insulating ability.

D. *"U" value* is the overall coefficient of heat transmission and is the combined thermal value of all the materials in a building section. U is the reciprocal of R. Thus U=1/R or R=1/U or 1/C where C is the thermal conductance and is the unit of measure of the rate of heat flow for the actual thickness of a material one square foot in area at a temperature of one degree

Fahrenheit. The lower the U value, the higher the insulating ability.

E. *Winter degree-day* is a unit based on temperature difference and time. For any one day, when the mean temperature is less than 65 degrees F (18.3 degrees Celsius), there are as many degree-days as the number of degrees difference between the mean temperature for the day and 65 degrees F. The daily mean temperature is computed as half the total of the daily maximum and daily minimum temperatures.

IV. Minimum Requirements:

A. All dwellings, single family or multifamily, to be constructed with FmHA loan and/or grant funds and all repair, remodeling or renovation work performed on dwelling with FmHA loan or grant funds shall be in conformance with the following, except as provided in paragraphs IV B 3 and IV D of this Exhibit:

NEW CONSTRUCTION—MAXIMUM U VALUES FOR CEILING, WALL AND FLOOR SECTION OF VARIOUS CONSTRUCTION

Winter degree days [1]	Ceilings [2]	Walls	Floors [3]	Glazing [4]	Doors [5]
1000 or less	0.05	0.08	0.08	1.13	
1001 to 2500	.04	.07	.07	.69	
2501 to 4500	.03	.05	.05	.69	Storm door if hollow core door or if over 25% glass.
4501 to 6000	.03	.05	.05	.47	Storm Door.
6001 or more	.026	.05	.05	.47	Storm Door.

Note.—U values are not adjusted for framing. Values calculated for components may be rounded. For example, a total R Value of 18.88 converts to a U value of .0529 rounded to .05.

[1] Winter degree-days may be obtained from the ASHRAE Handbook; the "NAHB Insulation Manual for Homes/Apartments"; local utilities; and the National Climatic Center, Federal Building, Asheville, NC. Manuals are available from NAHB RF, Rockville, MD 20850, or NMWIA, 382 Springfield Avenue, Summit, NJ 07901. Other sources of degree day data may be used if available from a recognized authority.

[2] Insulation must be continuous (i.e. no gaps) above all ceiling joists. In pitched roof construction, compression of insulation at the outside building walls is permitted to allow a 1" ventilation space under the roof sheathing. For any loose fill insulation, a baffle must be provided. Raised trusses are not required.

[3] For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces, the U value of floor section shall not exceed the value shown. A basement, crawl space, or garage shall be considered unheated unless it is provided with a positive heat supply to maintain a minimum temperature of 50 degrees F. Positive heat supply is defined by ASHRAE as "heat supplied to a space by design or by heat losses occurring from energy-consuming systems or components associated with that space."

Where the walls of an unheated basement or crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

Insulation may be omitted from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. The U value of foundation wall sections shall not exceed the value shown. This requirement shall include all foundation wall area, including header joist (band joist), to a point 50 percent of the distance from a finish grade to the basement floor level. Equivalent Uo configurations are acceptable.

MAXIMUM U VALUES OF THE FOUNDATION WALL SECTIONS OF HEATED BASEMENT NOT CONTAINING HABITABLE LIVING AREA OR HEATED CRAWL SPACE

Winter degree-days (65 F base)	Maximum U value	Glazing*
2500 or less	No requirement	1.13
2501 to 4500	0.17	1.13
4501 or more	0.10	.69

*Glazing in heated basement shall be limited to 5 percent of floor area unless alternative Uo combination is documented.

[4] Sliding glass doors are considered as glazing. The glazing value is for glass only. Glazing shall be limited to 15 percent of the gross area of all exterior walls enclosing heated space, except when demonstrated that the winter daily solar heat gain exceeds the heat loss and the glass area is properly screened from summer solar heat gain.

[5] 1¾ inch metal-faced door systems with rigid insulation core and durable weatherstripping providing a "U" value equivalent to a wood door with storm door and an infiltration rate no greater than .50 cfm per foot of crack length tested according to ASTM E-283 at 1.567 psf of air pressure, may be substituted for a conventional door and storm door. All doors shall be weatherstripped. Any glazed areas must be double-glazed.

MINIMUM R VALUES OF PERIMETER INSULATION FOR SLABS-ON-GRADE

Winter degree-days (65 F base)	Minimum R values*	
	Heated slab	Unheated slab
500 or less	2.8	
1000	3.5	
2000	4.0	2.5
3000	4.8	2.8
4000	5.5	3.5
5000	6.3	4.2
6000	7.0	4.8
7000	7.8	5.5
8000	8.5	6.2
9000	9.2	6.8
10000 or greater	10.0	7.5

*For increments between degree days shown, R values may be interpolated.

B. All existing dwellings to be purchased with RH loan and grant funds shall be insulated in accordance with the following:

EXISTING CONSTRUCTION—MAXIMUM U VALUES FOR CEILING, WALL AND FLOOR SECTION OF VARIOUS CONSTRUCTION

Winter degree days [1]	Ceilings	Walls [2]	Floors [3, 4]	Glazing	Doors [5]
1000 or less	0.05		0.08	1.13	
1001 to 2500	.04		.07	.69	
2501 to 4500	.03		.05	.69	Storm door if hollow core door or if over 25% glass.
4501 to 6000	.03		.05	.69	Storm Door.
6001 to 7000	.026		.05	.69	Storm Door.
7001 or more	.026		.05	.69	Storm Door.

Note.—U values are not adjusted for framing. Values calculated for components may be rounded. For example, a wall section with a total R Value of 18.88 converts to a U value of .0529 rounded to .05.

[1] Winter degree days may be obtained from the ASHRAE Handbook; the "NAHB Insulation Manual for Homes/Apartments;" local utilities; and the National Climatic Center, Federal Building, Asheville, NC. Manuals are available for NAHB RF, Rockville, MD 20850, or NMWIA, 382 Springfield Avenue, Summit, NJ 07901. Other sources of degree day data may be used if available from a recognized authority.

[2] Walls shall be insulated as near to new construction standards as economically feasible. Any exterior wall framing exposed during repair or rehabilitation work shall have vapor barrier installed and be fully insulated.

[3] For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces the U value of floor section shall not exceed the value shown.

A basement, crawl space or garage shall be considered unheated unless it is provided with a positive heat supply to maintain a minimum temperature of 50 degrees F. Positive heat supply is defined by ASHRAE as "heat supplied to a space by design or by heat losses occurring from energy-consuming systems or components associated with that space."

Where the walls of an unheated basement or crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

Insulation may be omitted from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. The U value of foundation wall sections shall not exceed the value shown. This requirement shall include all foundation wall area, including header joist (band joist), to a point 50 percent of the distance from a finish grade to the basement floor level. Equivalent Uo configurations are acceptable.

MAXIMUM U VALUES OF THE FOUNDATION WALL SECTIONS OF HEATED BASEMENT NOT CONTAINING HABITABLE LIVING AREA OR HEATED CRAWL SPACE

Winter degree days (65 F base)	Maximum U value	Glazing*
2500 or less	No requirement	1.13
2501 to 4500	0.17	1.13
4501 or more	0.10	.69

* Glazing in heated basement shall be limited to 5 percent of floor area unless alternative Uo combination is documented.

[4] Slab edge insulation should be provided wherever practical in areas of 2500 or more winter degree-days. Rigid insulation placed on the exterior face of the slab shall be protected by a durable and weather resistant material.

[5] Storm doors are not required for double doors, sliding doors or others where installation would be economically infeasible. 1¾ inch metal-faced door systems with rigid insulation core and durable weather-stripping providing a "U" value equivalent to a wood door with storm door and an infiltration rate no greater than .50 cfm per foot of crack length, tested according to ASTM E-283 at 1.567 psf of air pressure may be substituted for a conventional door and storm door. All doors shall be weatherstripped.

C. *Optional Standards.* Housing design not in compliance with the requirements of paragraphs IV A or B of this Exhibit may be approved in accordance with the provisions of this paragaph. Requests for acceptance proposed under paragraph C 1 below, must be approved by the State Director. Requests for acceptance proposed under paragraph C 2 must be approved by the Administrator. All submissions of proposed options to the State Director or Administrator shall contain complete descriptions of materials, engineering data, test data when U values claimed are lower than the ASHRAE Handbook of Fundamentals, and calculations to document the validity of the proposal. All data and calculations will be based upon the current edition of the ASHRAE Handbook of Fundamentals or other universally accepted data sources.

1. *Overall "U" values for enveloped components.* The following requirements shall be used in determining acceptable options to the requirements of paragraphs IV A and IV B of this Exhibit.

a. Uo (gross wall)—Total exterior wall area (opaque wall and window and door) shall have a combined thermal transmittance value (Uo value) not to exceed the values shown in Attachment 1 to this Exhibit D (available in any FmHA office). Equation 1 in Attachment 1 shall be used to determine acceptable combinations to meet the requirements.

b. Uo (gross ceiling)—Total ceiling area (opaque ceiling and skylights) shall have a combined thermal transmittance value (Uo value) not to exceed the values shown in Attachment 2 to this Exhibit D (available in any FmHA office). Equation 2 in Attachment 2 shall be used to determine acceptable combinations to meet the requirements.

2. *Overall structure performance.* The following requirements shall be used in determining acceptable options to the requirements of paragraphs IV A and B of this Exhibit.

a. The methodology must be cost effective to the energy user, and must not adversely affect the structural capacity, durability or safety aspects of the structure.

b. All data and calculations must show valid performance comparisons between the proposed option and a structure comparable in size, configuration, orientation and occupant usage designed in accordance with paragraphs IV A or B. Structures may be considered for FmHA loan consideration which can be shown by accepted engineering practice to have energy consumption equal to or less than those which would be attained in a representative structure utilizing the requirements of paragraphs IV A or B.

3. *Special consideration for seasonally occupied farm labor housing.* The following sets forth the minimum acceptable options to the requirements of paragraphs IV A or B of this Exhibit for seasonally occupied housing serving as security for farm labor housing loans and grants.

a. When the period of occupancy does not encounter 500 or more heating degree-days (HDD) as determined by an average of the previous 10 years based upon local climatological data published by the National Oceanic and Atmospheric Administration, Environmental Data Service, the standards of paragraphs IV A or B will not apply.

b. When the period of use exceeds 500 HDD, the 10-year average value for the period of occupancy shall be used to determine the degree to which the thermal insulation requirements of paragraphs IV A or B shall apply.

c. If mechanical cooling is provided and the period of occupancy encounters more than 700 cooling degree-days (CDD), as determined by an average of the previous 8 years based upon local climatological data published by the same source cited in paragraph IV C3a above, the thermal insulation requirements for 1,000 and less degree-days as stated in paragraph IV A or B shall apply.

D. *Energy efficient construction practices.* This section prescribes those items of design and quality control which are necessary to guarantee the energy efficiency of homes built according to the standards of this Exhibit. Also included are recommendations for extra energy efficiency in dwellings.

1. *Infiltration.* a. Requirements: All construction shall be performed in such a manner as to provide a building envelope free of excessive infiltration.

(i) Caulking and sealants. Exterior joints around windows and door frames, between wall cavities and window or door frames, between wall and foundation, between wall and roof, between wall panels, at penetrations of utility services through walls, floors and roofs, and all other openings in the exterior envelope shall be caulked, gasketed, weatherstripped, or otherwise sealed. Caulking shall be silicone rubber base or butyl rubber base, conforming to Federal Specifications TT–S–1543 and TT–S–1657 respectively, or materials demonstrating equivalent performance in resilience and durability.

(ii) Windows shall comply with ANSI 134.1, NWMA 15–2; the air infiltration rate shall not exceed 0.5 ft 3/min per ft. of sash crack.

(iii) Sliding glass doors shall comply with ANSI 134.2, NWM 15–3; the air infiltration rate shall not exceed .5 ft 3/min per square ft. of door area.

(iv) All insulation placed in open cavity walls shall be installed so that all space behind electrical switches and receptacles, plumbing, ductwork and other obstructions in the cavity are insulated as completely as possible. Insulation shall be omitted on the side facing the conditioned area; however, the vapor barrier in walls must not be cut or destroyed.

b. Recommendations: (i) Wrap outside corners of wall sheathing with 15 lb. asphalt impregnated building felt before siding application.

(ii) Utilize vestibules for entry doors, especially those facing into the direction of winter wind.

(iii) Install plumbing, mechanical and electrical components in interior partitions as much as possible. All water piping should be insulated from freezing temperatures.

2. *Heating and/or Cooling Equipment.* a. Requirements: All mechanical equipment for heating and/or cooling habitable space shall be designed to provide economy of operations.

(i) All space heating equipment (including fireplaces) requiring combustion air shall be sealed combustion types, or be located in a nonconditioned area (such as unheated basements) or adequate combustion air must be provided from outside the conditioned space.

(ii) All ductwork shall be designed and installed to minimize leakage. All metal to metal connections shall be mechanically joined and taped.

b. Recommendations: (i) Whenever possible, locate ductwork inside of conditioned areas in dropped ceilings, interior partitions or other similar areas.

(ii) Locate outside cooling units in areas not subject to direct sunlight or heat buildup.

3. *Vapor Barrier.* a. Requirements: Adequate vapor barriers must be provided adjacent to the interior finish material of the wall or other closed envelope components which do not have ventilation space on the non-conditioned side of the insulation.

(i) A vapor barrier at the inside of the wall or other closed envelope component must have a permeability (perm) rating less than that of any other material in the component and in no case have a perm rating greater than one. All vapor barriers must be sealed around all openings in the interior surface. Vapor barriers are not required in ceilings and floors. Continuous vapor barriers on ceilings, walls, and floors require adequate moisture vapor control in the conditioned space.

(ii) All vapor producing or exhaust equipment shall be ducted to the outside and equipped with dampers. This equipment includes rangehoods, bathroom exhaust fans and clothes dryers. If a dwelling design proposes the use of windows to satisfy the kitchen and/or bathroom ventilation requirements of the development standards, the incorporation of dehumidification equipment should be considered in accordance with paragraph IV D 3 b. Exhaust of any equipment shall not terminate in an attic or crawl space.

b. Recommendation: Forced air heating/cooling systems should include humidification/dehumidification systems where conditions indicate.

V. *General Design Recommendations:*

A. Orient homes with greatest glass area facing south with adequate overhangs to control solar gain during non-heating periods.

Examples of proper roof overhangs are given in Attachment 3 to this Exhibit D (available in any FmHA office).

B. Arrange plantings with evergreen wind buffers on north side and deciduous trees on south.

C. Whenever possible, orient entry door away from winter winds.

D. Design house with simple shape to minimize exterior wall area.

E. Minimize glass areas within constraints of required light and ventilation, applicable safety codes and other appropriate consideration.

F. Minimize the amount of paved surface adjacent to the structure where heat gain is not desirable.

VI. *State Supplements:* State supplements or policies will not be issued or adopted to either supplement or set requirements different from those of this Exhibit without the prior written approval of the National Office.

Exhibit E—Voluntary National Model Building Codes

The following documents address the health and safety aspects of buildings and related structures and are voluntary national model building codes as defined in § 1924.4(h)(2) of this subpart. Copies of these documents may be obtained as indicated below:

Building code	Plumbing code	Mechanical code	Electrical code
BOCA Basic/National Building Code [1].	BOCA Basic/National Plumbing Code [1].	BOCA Basic/National Mechanical Code [1].	National Electrical Code [6]
Standard Building Code [2]	Standard Plumbing Code [3]	Standard Mechanical Code [2]	
Uniform Building Code [3]	Uniform Plumbing Code [3]	Uniform Mechanical Code [3]	
CABO One and Two Family Dwelling Code [4].			

[1] Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.
[2] Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206.
[3] International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.
[4] Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041.
[5] National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

Exhibit F—Payment Bond

KNOW ALL PERSONS BY THESE PRESENTS: that

_____

(Name of Contractor)

_____

(Address of Contractor)

a _____,

(Corporation, Partnership or Individual)

hereinafter called PRINCIPAL and

_____

(Name of Surety)

hereinafter called SURETY, are held and firm bound unto _____

_____

(Name of Owner)

_____

(Address of Owner)

hereinafter called OWNER and the United States of America acting through the Farmers Home Administration hereinafter referred to as GOVERNMENT, and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of ———, ——— Dollars ($———) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the ——— day of ———19——, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery; equipment and tools, consumed or used in connection with the construction of such WORK, and for all labor cost incurred in such WORK including that by a SUBCONTRACTOR, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL (or with the GOVERNMENT in the event the GOVERNMENT is performing the obligations of the OWNER), shall have given written notice to any two of the following: The PRINCIPAL, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by register mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date of which PRINCIPAL ceased work on said CONTRACT, it being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER or GOVERNMENT and the CONTRACTOR shall abridge the right of any benficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in [number] counterparts, each one of which shall be deemed an original, this the —— day of ———.

ATTEST:

_____

Principal

_____

(Principal) Secretary

(SEAL)

By ————(s)

_____

(Address)

_____

Witness as to Principal

_____

(Address)

_____

Surety

ATTEST:

Witness as to Surety

(Address)

By
Attorney-in-Fact

(Address)

Note.—Date of BOND must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners should execute BOND.

Important: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

Exhibit G—Performance Bond

KNOW ALL PERSONS BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a
(Corportion, Partnership, or Individual) hereinafter called PRINCIPAL, and

(Name of Surety)

(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, and the United States of America acting through the Farmers Home Administration hereinafter referred to as the GOVERNMENT in the total aggregate penal sum of

Dollars ($———)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the ——— day of ——— 19 ——, a copy of which is hereto attached and made a part hereof for the construction of:

NOW, THEREFORE, if the PRINCIPAL shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, or GOVERNMENT, with or without notice to the SURETY and during the guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER and GOVERNMENT from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER and GOVERNMENT all outlay and expense which the OWNER and GOVERNMENT may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the liability of the PRINCIPAL AND SURETY hereunder to the GOVERNMENT shall be subject to the same limitations and defenses as may be available to them against a claim hereunder by the OWNER, provided, however, that the GOVERNMENT may, at its option, perform any obligations of the OWNER required by the contract.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", wherever used in this BOND, and whether referring to this BOND, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER or GOVERNMENT and the PRINCIPAL shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The OWNER and GOVERNMENT are the only beneficiaries hereunder.

IN WITNESS WHEREOF, this instrument is executed in [Number] counterparts, each one of which shall be deemed an original, this the ——— day of ———.

ATTEST:

Principal

(Principal) Secretary

(SEAL)

Witness as to Principal

(Address)

By ———(s)

(Address)

Surety

ATTEST:

Witness as to Surety

(Address)

By
Attorney-in Fact

(Address)

Exhibit H—Prohibition of Lead-Based Paints

I. *Purpose:* This Exhibit prescribes the methods to be used to comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, Public Law 91–695, as amended, (42 U.S.C. 4801 et seq.) and the amendment to Section 501 (3) of Public Law 91–695 (42 U.S.C. 4841 (3)) as amended by the National Consumer Health Information and Health Promotion Act of 1976, Public Law 94–317.

II. *Policy:* The Farmers Home Administration (FmHA) shall not permit the use of lead-based paint on applicable surfaces of any housing or buildings purchased, repaired, or rehabilitated for human habitation with financial assistance provided by this agency. Paints used on applicable surfaces shall not contain more than 0.06 percent lead by weight calculated as lead metal in the total nonvolatile content of liquid paints or in the dried film of paint already applied.

III. *Definitions:*

A. Housing and buildings mean any house, apartment, or structure intended for human habitation. This includes any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center or extended care facility, college housing, domestic or migratory labor housing, hospitals, group practice facilities, community facilities, and business or industrial facilities.

B. Applicable surfaces means all interior surfaces, whether accessible or not, and those exterior surfaces which are readily accessible to children under 7 years of age, such as stairs, decks, porches, railings, windows, and doors.

C. Lead-based paint means any paint containing more than .5 of 1 percentum lead by weight, or with respect to paint manufactured after June 22, 1977, lead-based paint containing more than six one-hundredths of 1 percentum lead by weight.

IV. *Requirements:*

A. All new housing and buildings shall comply with paragraph II of this Exhibit H.

B. For all existing housing and buildings built *after* 1950, on which a loan is closed after July 19, 1978, FmHA requires that the applicant, borrower or tenant be notified of the potential hazard of lead-based paints, of the symptoms and treatment of lead poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards. This will be accomplished by providing each applicant, borrower and/or tenant with a copy of Attachment 1 to this Exhibit H, "Lead-based Paint Hazards, Symptoms, Treatment and Techniques for Eliminating Hazards," available in any FmHA County

Office. Copies of Attachment 1 may be obtained by the County Supervisor from the Finance Office, 1520 Market Street, St. Louis, MO 63103.

C. For all existing housing or buildings built *before* 1950 on which a loan is closed after July 19, 1978, FmHA requires that the applicant, borrower and/or tenant be notified as in paragraph IV B and a copy of Attachment 2 to this Exhibit H, "Caution Note on Lead-Based Paint Hazard," available in any FmHA County Office, shall be delivered to the hands of the applicant, borrowers and/or tenant.

D. For all property transfers and inventory property sales, Attachments 1 and 2 to this Exhibit H (available in any FmHA office) shall be handed to the purchaser by the FmHA representative.

E. All inventory housing or buildings built before 1950 to be repaired, renovated, or rehabilitated shall have tests for lead content, and where found to be hazardous, shall have any interior lead-based paint removed entirely. Loose or cracked surfaces shall be cleaned down to the base surface before repainting with a paint containing not more than six one-hundredths of 1 percentum lead by weight in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both. Contracting officers shall include the following provision prohibiting the use of lead-based paint in all contracts and subcontracts for construction or rehabilitation of housing or buildings:

Lead-Based Paint Prohibition

No lead-based paint containing more than .5 of 1 percentum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, or with respect to paint manufactured after June 22, 1977, no lead-based paint containing more than .06 of 1 percentum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, shall be used in the construction or rehabilitation of residential structures under this contract or any subsequent subcontractors.

Authority: This amendment is made under provisions of 5 U.S.C. 301, 40 U.S.C. 486 (c).

Done at ———, ———— this —— day of ————, 19—.

FmHA Representative

V. *Summary:* Section 401 of the Lead-Based Paint Poisoning Prevention Act as amended by the National Consumer Health Information and Health Promotion Act of 1976, PL 94–317, provides a requirement that each federal agency issue regulations and to take such other steps necessary to prohibit the use of lead-based paint on all applicable surfaces in Federal and Federally-assisted construction or rehabilitation of residential structures. The Lead-Based Paint Poisoning Prevention Act, PL 91–695, January 13, 1971, provides for grants to units of general local government in any state for the purpose of detecting and treating incidents of lead-based paint poisoning. Title II of this Act also provides for grants to the same units to identify those areas of risk including testing to detect the presence of lead-based paint on surfaces of residential housing.

Exhibit I—Guidelines for Seasonal Farm Labor Housing

Section 100

General—This Exhibit sets forth the guidelines and minimum standards for planning and construction of new Labor Housing (LH) that will be occupied on a seasonal basis. Rehabilitation LH projects will be in substantial conformance with these guidelines and standards. A "seasonal basis" is defined as 6 months or less per year. Seasonal housing for the farmworker need not be convertible to year-round occupancy; however, the living units shall be designed for the intended type of tenant, the time of occupancy, the location, the specific site, and the planned method of operation. It is important that the design of the LH site and buildings will help to create a pleasing lifestyle which will promote human dignity and pride among its tenants.

Section 200

Codes and Regulations—Compliance is required with National, state and local codes or regulations affecting design, construction, mechanical, electrical, fire prevention, sanitation, and site improvement.

Section 300

Planning

300–1 Complete architectural/engineering services in accordance with this subpart will be required if an LH grant is involved or the LH loan will involve more than four individual family units, or any number of group living units, or dormitory units accommodating 20 or more persons.

300–2 Buildings and site design shall provide for a safe, secure, economical, healthful, and attractive living facility and environment suited to the needs of the domestic farm laborer and his/her family.

300–3 At least 5 percent of the individual family units in a project, or one unit, whichever is greater, and all common use facilities will be accessible to or adaptable for physically handicapped persons. This requirement may be modified if a recipient/borrower shows, through a market survey acceptable to FmHA, that a different percentage of accessible or adapatable units is more appropriate for a particular project and its service area.

Site Design

301–1 General—The site design shall be arranged to utilize and preserve the favorable features and characteristics of the property and to avoid or minimize the potential harmful effect of unfavorable features. Particular attention is directed to § 1944.164(k), (l) and (m) of Subpart D of Part 1944 of this chapter with reference to compliance with Subpart G of Part 1940 of this chapter. Some of the features which must be considered are the topography, drainage, access, building orientation to sun and breezes; and advantageous features, such as vegetation, trees, good views, etc. or disadvantageous features, such as offensive odors, noxious plants, noise, dust, health hazards, etc.

301–2 Drainage—Surface and subsurface drainage systems shall be provided in accordance with the applicable development standard and Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5.)

301–3 Water and Sewage Disposal—Water supply and sewage disposal installations shall comply with subpart D of Part 1804 of this chapter (FmHA Instruction 424.5), the applicable development standard and all governing state and local department of health requirements. Where environmentally and economically feasible, the LH facility shall connect to pubic water and waste disposal systems.

301–4 Electrical—Adequate electrical service shall be provided for exterior and interior lighting and for the operation of equipment.

301–5 Vehicular Access and Parking.

301–5.1 Safe and convenient all-weather roads shall be provided to connect the site and its improvements to the off-site public road.

301–5.2 All-weather drives and parking shall be provided for tenants, and for trucks and buses as needed within the site. Driveways, parking areas and walkway locations shall be in substantial conformance with the applicable development standard.

301–6 Walks:

301–6.1 Walks shall be provided for safe convenient access to all dwellings and for safe pedestrian circulation throughout the development between locations and facilities where major need for pedstrian access can be anticipated, such as laundry, parking to dwelling units, common dining rooms, etc.

301–6.2 Walkways shall be hard surface, such a concrete, asphalt, or stablized gravel, and shall be adequately drained.

301–7 Building Location:

301–7.1 Side and rear yards and distances between buildings shall conform to the applicable development standard.

301–8. Garbage and Refuse:

301–8.1 Garbage and refuse containers for individual units are required and shall be stored on durable functional racks or shall be located in a central screened area with easily cleaned surfaces. Single containers for multiple units shall be screened and in locations designed to accommodate collection vehicle functions.

301–9 Fencing:

301–9.1 Fencing used in the site design for project privacy or building security shall be harmonious in appearance with other fences and surrounding facilities which fall within the same view.

301–10 Outdoor living:

301–10.1 All public areas where pedestrian use can be anticipated after sunset shall be adequately lighted for security purposes, such as walkways to common use facilities—laundry, dining halls, building entrances, parking areas, etc.

301–11 Planting and Landscaping:

301–11.1 Planting and lawns or ground covers shall be provided as required to protect the site from erosion, control dust, for active and passive recreation areas, and provide a pleasant environment.

Building Design

302–1.1 Living Units Design:

302–1.1 *Individual Family Unit*—One family or extended family to a unit which shall contain adequate space for living, dining, kitchen, bath and bedrooms. Multifamily type units are required whenever possible for economy of site and building construction.

a. The minimum total net living unit size shall be 400 square feet. This size assumes occupancy of four persons. Units planned for additional occupants shall include an additional 60 square feet of living area per person.

b. A living/dining area shall be provided to accommodate a table and chairs with adequate dining and circulation space for the intended number of occupants. The living/dining area should be combined with the kitchen area.

c. The kitchen shall contain a sink, cooking range and refrigerator. A minimum free countertop area of six square feet is required. A minimum of 40 square feet of shelf area is required.

d. Each bathroom shall contain adequate space and circulation for a bathtub and/or shower, water closet and lavatory. Access to the bathroom shall not be through another bedroom in dwelling units containing more than one bedroom.

e. Bedroom areas separate from living areas are required. The design of the unit shall provide a minimum of 50 square feet of sleeping area per intended occupant including storage. Housing for families with children shall have a separate bedroom or sleeping area for the adult couples. A two foot by two foot shelf with a two foot long clothes hanging rod is required for each occupant.

302–1.2 *Group Living Unit*—A living unit designed for the occupancy of more than one family or for separate occupancy of male and/or female groups. Common bath spaces shall be contained in the same building. Group living units for families shall have separate bedrooms for each adult couple.

a. The design of the unit shall provide for a minimum of 620 square feet of total net living area for eight persons and an additional 60 square feet for each additional occupant. Additional area shall be planned for a second bathroom when anticipated occupancy will exceed eight persons, or if it will be occupied by persons of both sexes.

b. The kitchen shall contain an adequate sink, cooking range, refrigerator, and space the size of which is commensurate with the needs of the group living unit. A minimum of free countertop area of eight square feet is required. A minimum of 50 square feet of shelf area is required.

c. Refer to paragraph 302–1.1 b for living/dining requirements.

d. Each bathroom shall contain adequate space and circulation for comfortable access to, and use of, fixtures which will include a bathtub and/or shower, water closet and lavatory. In no case shall minimum fixtures be less than that required per paragraph 302–1.3 c below.

e. Refer to paragraph 301–1.1 e for bedroom requirements.

302.1.3 *Dormitory Living Unit*—A building which provides common sleeping quarters for persons of the same sex and may or may not contain kitchen and/or dining facilities in the same building as the sleeping quarters.

a. The design of areas for sleeping purposes, using single beds, shall provide for not less than 72 square feet per occupant including storage.

b. The design of areas for sleeping purposes, using double bunk beds, shall provide for not less than 40 square feet per occupant. Triple bunk beds will not be allowed.

c. The design of each dormitory building must include a water closet and a bathtub or shower for each 12 occupants, and a lavatory for each 8 persons. Urinals may be substituted for men's water closets on the basis of one urinal for one water closet, up to maximum of one-third of the required water closets.

d. Adequate kitchen and dining facilities must be provided which may be in the dormitory building or detached at a distance of not more than 200 feet from the sleeping quarters. In either case, the space must contain adequate cooking ranges, refrigerators, sinks, countertop, food storage shelves, tables and chairs, and circulation space. These facilities will comply with the requirements of the "Food Service Sanitation Ordinance and Code," Part V of the "Food Service Sanitation Manual," U.S. Public Health Service Publication 934 (1965).

302–2 Other Facilities:

302–2.1 *General*—Other facilities, authorized by Subpart D of Part 1944 of this chapter, needed by farm workers may be provided in several ways: part of a living unit, located in the project, or, with the exception of laundry facilities, available nearby.

302–2.2 *Laundry Facilities*—Laundry facilities shall be required on-site. Drying yards shall be provided if dryer units are not provided. The design of washing facilities shall plan for a minimum rate of one washer for each 20 occupants. One drying unit may be provided for every two washers, if automatic dryers are customarily provided for rental housing in the community. Laundry facilities shall have adequate space for loading the units, circulation, and clothes folding.

302–2.3 *Office and Maintenance*—An office and maintenance space shall be provided or available, commensurate with the number of living units served, and shall meet the criteria of the FmHA Manual of Acceptable Practices. If necessary, the maintenance space shall have sufficient area to accommodate furniture storage.

302–2.4 *Child Care Center*—Where feasible, a child care center may be included to provide supervised activity and safety for children while the parents work. Supervisors and workers for such centers are sometimes enlisted on a volunteer basis and the cost borne by nonprofit associations or community organizations. Grants are sometimes available through Federal or state programs. Consequently, the design of the child care center should meet the requirements of those sources providing organizational personnel and/or financing.

302–2.5 *Manager's Dwelling*—If a manager's dwelling unit is to be provided as a part of the FmHA loan or grant, it will meet these guidelines. However, if it is necessary to provide a year-round caretaker/manager dwelling unit with FmHA loan or grant funds, it will meet the applicable development standard.

302–2.6 *Recreation*—Outdoor recreation space is required and shall be commensurate with the needs of the occupants. Active and passive recreation areas will be provided which may consist of outdoor sitting areas, playfields, tot lots and play equipment.

General Requirements

303–1 Materials and Construction—All materials and their installation in a LH facility shall meet the applicable development standard. Any exceptions to these requirements for materials and their installation must be obtained with the approval of the FmHA National Office. Material should be selected that is durable and easily cleaned and maintained.

303–2 Fire Protection—Fire protection and egress shall be provided to comply with the applicable development standard.

303–3 Light, Ventilation, Screening—Natural light and ventilation requirements as specified in the applicable development standard shall be followed. Screening of all exterior openings is required.

303–4 Ceiling Heights—Ceiling heights of habitable rooms shall be a minimum of seven feet six inches clear, and seven feet in halls or baths in dwelling units. Public rooms shall have a minimum of eight feet clear ceiling height. Sloping ceilings shall have at least seven feet six inches for ½ the room with no portion less than five feet in height.

303–5 Heating and Cooling—Heating and cooling and/or air circulation equipment shall be installed as needed for the comfort of the tenants, considering the climate and time of year the facility will be in operation. Maximum feasible use of passive solar heating and cooling techniques shall be required. All equipment installed will be in accordance with the applicable development standard to protect the health and safety of occupants.

303–6 Plumbing—Plumbing materials and their installation shall meet the applicable development standard. Hot water will be required to all living units, baths, kitchens and laundry facilities.

303–7 Insulation, Thermal Standards, Winterization—Insulation will be required where either heating or cooling is provided as per paragraph 303–5 above or when climatic conditions dictate a need for insulation. Insulation Standards will comply with Exhibit D, paragraph IV C 3, of this subpart, or the state insulation standards, whichever are the more stringent.

303–8 Electrical—Electrical design, equipment and installation shall comply with the requirements of the latest edition of the National Electrical Code, and the applicable development standard for materials and their installation. Individual family units may be separately metered; other types of dwelling units may be separately metered as required.

303–9 Security and Winterization—Adequate management and physical measures will be provided as necessary to protect the facility during off-season periods.

including adequate heating and insulation as required.

Exhibit K—Classifications for Multi-Family Residential Rehabilitation Work

I. General

This Exhibit distinguishes between what FmHA considers maintenance and repair work, moderate rehabilitation and substantial rehabilitation. In all cases, the building or project to be rehabilitated shall be structurally sound. The applicant shall have a structural analysis of the existing building made to determine the adequacy of all structural systems for the proposed rehabilitation.

II. Definitions

Maintenance and Repair—Work involved in the selective replacement and general maintenance and repair of certain materials, appliances or components of an existing residential building.

Moderate Rehabilitation—All work directly involved in the rearrangement of interior space, the replacement of finish materials or components of the electrical, plumbing, heating or conveyance systems of an existing multi-family residential building. Work and improvements are considered to be more than routine maintenance and repair.

Substantial Rehabilitation—All work directly involved in the rearrangement of interior space that involves alteration of load bearing partitions and columns; the replacement of the electrical, plumbing, heating or conveyance systems; and the addition to and/or major conversion of existing multi-family residential buildings or other building structures.

Moderate rehabilitation and repair shall not be limited to building changes for cosmetic or convenience purposes. In all cases moderate rehabilitation shall involve a minimum of three (3) components of building rehabilitation listed as moderate. Unless combined with other improvements in a project that are considered to be moderate or substantial rehabilitation the items identified as maintenance and repair are considered to be cosmetic and convenience changes.

When a rehabilitation project consists of both moderate and substantial rehabilitation components, those substantial rehabilitation components shall be in accordance with FmHA's development standards and local codes and regulation requirements. Where the majority of project components of building rehabilitation are considered substantial the project shall be considered in the substantial rehabilitation category.

Those site components of rehabilitation such as landscaping, grading, drainage, fencing, parking areas, recreation areas, water and waste disposal systems, etc., whether considered either maintenance and repair, moderate rehabilitation or substantial rehabilitation shall be in accordance with FmHA's development standards for site development work; all local codes and regulation requirements; and sound engineering and architectural practices.

Any alteration of a structure listed or eligible for listing on the National Register of Historic Places may be considered either moderate or substantial rehabilitation; however, it shall conform first to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and then to FmHA's requirements. In cases where the Secretary of the Interior's standards cannot be met, rehabilitation will conform to the agreed upon approaches, treatments and techniques resulting from the consultation process between FmHA, the borrower, the State Historic Preservation Officer and the Advisory Council of Historic Preservation.

III. Components of Multi-Family Building Rehabilitation

The components of multi-family building rehabilitation necessary and generally considered by FmHA to be either maintenance and repair, moderate rehabilitation or substantial rehabilitation include but are not limited to those listed in the following chart.

COMPONENTS OF MULTI-FAMILY BUILDING REHABILITATION

Components	Maintenance and repair	Moderate rehabilitation	Substantial rehabilitation
Air conditioning	o		
Appliance replacement or repair	o		
Cabinet replacement or repair	o		
Carpeting	o		
Caulking	o		
Ceiling framing	o		
Clothes closets or shelving improvements	o		
Door repair	o		
Drywall repair	o		
Gutters and downspouts	o		
Hardware replacement or repair	o		
Kitchen cabinet improvement	o		
Lighting fixture replacement or repair	o		
Mail boxes	o		
Painting	o		
Paneling	o		
Partition repair	o		
Roof repair	o		
Signage	o		
Stair repair	o		
Tile work	o		
Wallpapering	o		
Window shades and curtains	o		
Door replacement		o	
Drywall replacement		o	
Elevator components replacement		o	
Exterior entrance redesign, relocation		o	
Finish flooring materials		o	
Flashing		o	
Furnace replacement		o	
Gas pipes		o	
Insulation		o	
Lath and plaster replacement		o	
New shingles or roof replacement		o	
Partition (non bearing) replacement, or relocation		o	
Plumbing fixture replacement		o	
Pointing		o	
Porch and steps alterator or replacement		o	
Stair replacement, or relocation		o	
Storm windows and weatherstripping		o	
Subfloor material replacement		o	
Trim—exterior and interior		o	
Window replacement		o	
New or alteration to the:			
Mechanical system			o
Soil pipes			o
Vent pipes			o
Waste pipes			o
Alteration or replacement of structural components:			
Beams			
Chimneys and vents			o
Columns and post			o
Electrical service—replacement or new			o
Elevator replacement			o
Exterior walls			o
Floor construction			o
Footing			o
Foundation wall			o
Foundation waterproofing			o
Interior walls			o

Moderate repair and rehabilitation shall not be limited to building changes for cosmetic purposes. In all cases moderate rehabilitation shall involve a minimum of three (3) components of building rehabilitation listed as moderate. Unless combined with other improvements in a project that are considered to be moderate or substantial rehabilitation the items identified as maintenance and repair are considered to be cosmetic and convenience changes.

Exhibit L—Insured 10-Year Home Warranty Plan Requirements

I. Purpose: In recent years, numerous third-party home warranty plans have been developed offering new homeowners varying degrees of protection aganist builder default and/or major structural defects in their homes. This exhibit establishes the criteria and procedures by which a warrantly plan is found acceptable for new construction of single family homes financed by Farmers Home Administration (FmHA). An acceptable warrantly plan will:

A. Assure that FmHA borrowers receive adequate warranty coverage,

B. In certain circumstances, eliminate the requirement for FmHA personnel to make the first two construction inspections, and

C. Permit a loan up to the market value of the security (less the unpaid principal balance and past due interest of any other liens against the security), even though FmHA personnel may not have performed period inspections during construction.

II. Types of Warranty Companies:

A. An insured warrantly company is underwritten by an insurance carrier, licensed to operate as an insurer by the states where the warranty company plans to operate, and has an acceptable rating from a

nationally recognized rating company such as A.M. Best Company.

B. A risk retention group is an insurer which is licensed in one state and is authorized, under the Products Liability Risk Retention Act of 1981, to issue its policies in all states. This authority is not challenged by FmHA; however, there remains some question as to the legal propriety of a 10-year insured warranty insurer to be a risk-retention group. If at some future time any state insurance commission or regulatory agency challenges the legal authority of such group, FmHA will reconsider its acceptance of the group.

C. Individual state warranty plans, such as that offered by the State of New Jersey, are backed by the full faith and credit of the state government.

III. Plan Requirements:

To be considered acceptable, a warranty plan must include the following features:

A. The entire cost (fee, premium, etc.) of the coverage is prepaid and coverage automatically transfers to subsequent owners without additional cost.

B. The coverage is not cancellable by the warrantor (builder), warranty company or insurer.

C. The coverage age includes at least the following:

(1) For one year from the effective date, any defects caused by faulty workmanship of defective materials.

(2) During the second year after the effective date, the warranty continues to cover the wiring, piping and duct work of the electrical, plumbing, heating and cooling systems, plus the items in (3).

(3) During the third through the tenth years, the warranty continues to cover major structural defects. A major structural defect is actual damage to the load-bearing portion of the home including damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) which affects its load-bearing function and which vitally effects or is imminently likely to affect use of the home for residential purposes.

D. A system is provided for complaint (claims) handling which includes a conciliation and, if necessary to resolve matters in dispute, arbitration arranged by the American Arbitration Association or similar organization.

E. A construction inspection plan is required if FmHA is to eliminate the first two FmHA inspections or permit a full market value loan when FmHA inspections are not conducted.

IV. Information for Review:

A. Companies submitting warranty plans for a determination of acceptability must support requests with the following information.

(1) Eveidence that the insured warranty company has met the applicable state licensing and/or regulatory requirements in the state in which the company plans to operate.

(2) Evidence that the insurance carrier underwriting the warranty plan is licensed to operate as an insurer in the states in which the company plans to operate and has an acceptable rating from a nationally recognized company such as A.M. Best Company.

(3) State warrenty plan agencies will provide evidence that the plan is backed by the full faith and credit of the state.

(4) A full description of the warranty plan including information on the fees, builder and home registration procedures, required construction standards, construction inspection procedures, coverage provided and claims procedures.

(5) A sample copy of the warranty information and/or policy which is provided to the homeowner.

(6) Suggested means by which FmHA field offices can readily assure that the builder is a member in good standing prior to loan approval and that a warrant will be issued upon the completion of construction prior to the final release of funds.

B. Submission and Acceptance:

(1) Insured warranty companies, except those operating as risk retention groups, and state warranty plan agencies will submit their requests and supporting information to the FmHA State Director in the state in which they plan to operate. State Directors will determine the acceptability of insured warranty plans and state warranty plans in their jurisdictions, notify the company or agency of the decision in writing and notify field offices by issuance of a State Supplement including the names and addresses of acceptable warranty companies and any other pertinent information.

(2) Warranty companies claiming authority as risk retention groups will submit their requests and supporting information including certification that it has complied with all requirements of the Products Liability Risk Retention Act of 1981 (Public Law 97-45) and information indicating the state in which it is licensed, information to the FmHA National Office, Single Family Housing Processing Division. The National Office will determine the acceptability of the warranty of a risk retention group, notify the company of the decision in writing and notify field offices by issuance of an attachment to this Exhibit.

V. Warranty Performance:

A. County Supervisors will report inadequate warranty performance through their District Director to the State Director. State Directors will review the situation, assist in resolving any problems and, if necessary, initiate action under Subpart F of Part 1942 of this chapter. State Directors will inform, by memorandum, the Director, Single Family Housing Processing Division, National Office, of any problems with warranty performance and if any debarment action is initiated.

B. State Directors will annually monitor each warranty company and/or its insurer to assure continued compliance with state licensing and/or regulatory requirements.

Attachment 1.—Acceptable Warranty Companies

The warranty company listed below claims authority to act as a risk retention group under the Products Liability Risk Retention Act of 1981 and as such, to operate in all states to provide 10-year home warranties. This authority remains subject to future challenges by any state insurance commissioner or regulatory agency; however, until such challenge is made, FmHA accepts their warranty.

Name, Address, and Area of Operation

Home Owners Warranty Corporation/HOW Insurance Company, 2000 L Street, N.W., Washington, D.C. 20036, Telephone: 202-463-4600—All states

Subpart F—Complaints and Compensation for Construction Defects

12. In § 1924.253, paragraph (a)(3) is amended by changing the phrase "FmHA's Minimum Property Standards" to "development standards."

13. In § 1942.253, paragraph (c) is revised to read as follows:

§ 1924.253 Definitions

* * * * *

(c) *Newly constructed dwelling.* A newly constructed dwelling is one which (1) is financed with a Section 502 RH loan, (2) was, at the time the loan was closed, not more than one year old and not previously occupied as a residence, and (3) the required construction inspections were made by Farmers Home Administration (FmHA), Department of Housing and Urban Development (HUD), Veterans Administration (VA) or as authorized in Subpart A of Part 1924 of this chapter.

* * * * *

PART 1930—GENERAL

14. The authority citation for Part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

15. In Exhibit B, paragraph VD(3)(a) is amended by changing the reference to "§ 1924.4(h)" to "§ 1924.4(i)."

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

16. The authority citation for Part 1933 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart I—Self-Help Technical Assistance Grants

17. In § 1933.409, paragraph (f) is revised to read as follows:

§ 1933.409 Other considerations.

* * * * *

(f) Compliance with local codes and regulations. Applicants must be sure that planning and development of self-

help housing will conform with any applicable laws, ordinances, codes and regulations governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation and zoning, as well as development standards in accordance within Subpart A of Part 1924 of this chapter.

* * * * *

PART 1940—GENERAL

18. The authority citation for Part 1940 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.27 and 2.70.

Subpart G—Environmental Program

19. In § 1940.305, paragraph (j) is added to read as follows:

§ 1940.305 Policy implementation.

* * * * *

(j) *Noise abatement.* For purposes of assessing noise impacts and for determining the acceptability of housing sites in terms of their exposure to noise, FmHA has adopted and follows the standards and procedures developed by HUD and contained in 24 CFR 51 of Subpart B entitled, Noise Abatement and Control.

PART 1942—ASSOCIATIONS

20. The authority citation for Part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 7 CFR 2.23 and 2.70.

Subpart A—Community Facility Loans

§ 1942.17 [Amended]

21. In § 1942.17, paragraph (p) (4) is amended by changing the reference "Form FmHA 424–12," to "Form FmHA 1924–12" in the sixth and seventh sentences.

22. In § 1942.17, paragraph (p) (5) is amended by changing the reference "Form FmHA 424–18" to "Form FmHA 1924–18" in the third and fourth sentences.

23. In § 1942.17, paragraph (r) (3) (i) and (ii) are amended by changing the reference "Form FmHA 424–12" to "Form FmHA 1924–12."

24. In § 1942.18, paragraph (n) (3) is amended by changing the references to "Form FmHA 424–10" and "Form FmHA 424–9," to "Form FmHA 1924–10" and "Form FmHA 1924–9," respectively.

25. In § 1942.18, paragraph (o) (1) is amended by changing the reference "Form FmHA 424–16" to "Form FmHA 1924–16."

26. In § 1942.18, paragraph (o) (3) is amended by changing the reference "Form FmHA 424–18" to "Form FmHA 1924–18."

27. In § 1942.18, paragraph (o) (5) is amended by changing the reference "Form FmHA 424–12" to "Form FmHA 1924–12."

28. In § 1942.18, paragraph (o) (7) (ii) is amended by changing the reference "Form FmHA 424–7," to "Form FmHA 1924–7."

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

29. The authority citation for Part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Insured Farm Ownership Loan Policies, Procedures and Authorizations

§ 1943.32 [Amended]

30. In § 1943.32, paragraph (a) is amended by changing the reference "424–1," to "1942–1."

Exhibit A of Subpart A [Amended]

31. In Exhibit A, paragraph II, B, 1 is amended by changing the reference "Form FmHA 424–1," to "Form FmHA 1924–1" in five places.

Subpart B—Insured Soil and Water Loan Policies, Procedures and Authorizations

§ 1943.82 [Amended]

32. In § 1943.82, paragraph (a) is amended by changing the reference "424–1," to "1924–1."

Subpart C—Insured Recreation Loan Policies, Procedures and Authorizations

§ 1943.132 [Amended]

33. In § 1943.132, paragraph (a) is amended by changing the reference "424–1" to "1924–1."

PART 1944—HOUSING

34. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

35. In § 1944.16, paragraph (a) (1) (i), (a) (5) and (b) are revised to read as follows:

§ 1944.16 Building requirements.

(a) * * *

(1) * * *

(i) Living area will include all finished areas as well as unfinished areas that are designed for or normally considered as living area.

* * * * *

(5) Solid fuel burning devices may be authorized only if the loan approval official determines and documents in the case file that:

(i) A dependable and economical fuel supply is available,

(ii) The device complies with paragraph IV D 2 of Exhibit D of Subpart A of Part 1924 of this chapter,

(iii) The device and installation drawings should be approved and will be inspected upon completion by at least one of the following:

(A) Local fire department official or the authority having jurisdiction,

(B) An insurance company representative that is providing fire coverage on the property; or,

(C) If required by local codes, the code authority having jurisdiction; and

(iv) The State Office policies and guidelines with respect to such devices are being followed.

(b) *Existing dwellings.* Applicants should be counseled regarding the type of housing necessary to meet their needs. Existing dwellings purchased with RH funds must be structurally sound, functionally adequate, either be in good repair or placed in good repair with loan funds. The general paragraphs of Guide 2 of Subpart A of Part 1924 of this chapter, "FHA Design Guide," available in any FmHA office, should be used as a guide to determine whether the dwelling is suitable for this program. All existing dwellings must meet the thermal performance standards required in Exhibit D, paragraph IV B, of Subpart A of Part 1924 of this chapter. The policies stated in paragraph (a) of this section may be used as a guide in making a determination of adequate but modest dwellings; however, modest existing dwellings should contain no more than 1,400 square feet of living area and be modest in cost and design. Loans should not be made on existing dwellings which contain more than one design feature which would not be allowed in new homes. A loan will not be made on an existing manufactured home unless it is already financed with a Section 502 Rural Housing loan or is being sold from FmHA inventory.

* * * * *

§ 1944.22 [Amended]

36. In § 1944.22, paragraph (e)(3) is amended by changing the reference "Form FmHA 424–1" to "Form FmHA 1924–1."

§ 1944.30 [Amended]

37. In § 1944.30, paragraph (a) is amended by changing the reference "FmHA 424–1" to "FmHA 1924–1."

§ 1944.45 [Amended]

38. In § 1944.45, paragraph (f)(5) is amended by changing the reference "Form FmHA 444–11" to "Form FmHA 1944–11."

39. In § 1944.45, paragraphs (h), the first sentence, and (i) (2) are amended by changing "MPS" to "the applicable development standards."

40. In § 1944.45, paragraph (k) is amended by changing the reference "Form FmHA 424–19" to "Form FmHA 1924–19."

§ 1944.46 [Amended]

41. In § 1944.46, paragraph (d) is amended by changing the reference "Form FmHA 424–6" to "Form FmHA 1924–6."

42. In § 1944.46, paragraph (f) is amended by changing the references "Form FmHA 444–11" and "Form FmHA 424–6," to "Form FmHA 1944–11" and "Form FmHA 1924–6," respectively.

43. In § 1944.46, paragraph (g) is amended by changing the reference "Form FmHA 424–12" to "Form FmHA 1924–12."

Exhibit A of Subpart A [Amended]

44. In Exhibit A, paragraph I, E is amended by changing the reference "Form FmHA 424–2" to "Form FmHA 1924–2."

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

45. In § 1944.163, paragraph (e) is revised to read as follows:

§ 1944.163 Conditions under which an LH grant may be made.

* * * * *

(e) The housing must be durable and suitable for year round use unless the need for such housing is seasonal and year-round occupancy is not practical and will not be needed. Construction of seasonal farm labor housing will be permitted upon a finding of persistent need for migrant farmworker housing in the area and such housing will be used solely by migrant farmworkers while they are away from their residence. Seasonal farm labor housing that will be occupied for six months or less per year by migrant farmworkers while they are away from their residence, will be constructed in accordance with Exhibit I to Subpart A of Part 1924. Farm labor housing that is to be occupied less than year-round but more than six months shall be in substantial conformance with and be easily convertible to the applicable development standards as required by § 1924.5(d)(1) of Subpart A of Part 1924 of this Chapter. Such projects that are to be occupied less than year-round but more than six months may be approved after review of the savings in construction costs, the plan for conversion to full compliance with development standards and the long term need for such housing.

* * * * *

§ 1944.175 [Amended]

46. In § 1944.175, paragraph (a)(4) is amended by changing the reference "Form FmHA 424–18" to "Form FmHA 1924–18."

Exhibit A–3 of Subpart D [Amended]

47. In Exhibit A–3, paragraphs II (a)(2) and (b)(1) and (3) are revised to read as follows:

Exhibit A–3 of Subpart D—Labor Housing Construction Guidelines

* * * * *

II. Types of housing and appropriate standards.

a. * * *

2. All planning and construction other than seasonal farm labor housing and housing to be occupied more than six months but less than year-round shall be in conformance with the applicable development standard as required by § 1924.5(d)(1) of Subpart A of Part 1924 of this chpater and applicable state and local codes.

b. * * *

1. All housing designed for year-round occupancy will be planned in compliance with the applicable development standard and will be compatible with conventional rental type housing.

* * * * *

3. Housing to be occupied more than six months but less than year-round shall be designed and constructed in substantial conformance with and be easily converted to the applicable development standard requirements for year-round housing.

* * * * *

Subpart E—Rural Rental Housing Loan Policies, Procedures and Authorizations.

48. In § 1944.212, paragraph (c)(2)(i) is revised to read as follows:

§ 1944.212 Loan purposes.

* * * * *

(c) * * *

(2) * * *

(i) Meet the applicable development standards, as provided for in § 1924.5(d)(1) of Subpart A of Part 1924 of this chapter, for new construction as approved by the respective loan approving official.

* * * * *

49. In § 1944.215 paragraph (a)(1) introductory text, paragraphs (a)(1) (iii) and (iv), and (a)(3)(v) are revised to read as follows:

§ 1944.215 Special conditions.

(a) * * *

(1) Be economical in construction and not of elaborate or extravagant design or materials and all new construction shall be in conformance with the applicable development standard as provided for in § 1924.5(d)(1) of Subpart A of Part 1924 of this chapter. As a general rule, the square footage living area of new rental units and related facilities to be constructed with RRH loan funds should be within the guidelines listed below.

Type of unit	Maximum living area (ft^2)
0-Bedroom unit	425–525
1-Bedroom unit	570–700
2-Bedroom unit	700–850
3-Bedroom unit	850–1,020
4-Bedroom unit	1,020–1,200

* * * * *

(iii) Room sizes must be in compliance with the applicable development standard. Minimum room size may be determined by the minimum area or on a required furnishing basis.

(iv) When community rooms or buildings are provided as part of the related facilities, their gross square footage area should be within the guidelines set forth in FmHA Manual of Acceptable Practices (MAP) Vol. 4930.1.

* * * * *

(3) * * *

(v) Elevators will be provided in accordance with the applicable development standards. If elevators are included, the subsoil conditions of the site must be adequate for the installation of hydraulic elevators and sufficient service personnel must be available in the area for service and repair work.

* * * * *

§ 1944.235 [Amended]

50. In § 1944.235, paragraph (c)(1)(v) is amended by changing the reference "Form FmHA 424–18" to "Form FmHA 1924–18."

51. In § 1944.235, paragraph (c)(1)(vii) is amended by changing the reference "Form FmHA 424–10" to "Form FmHA 1924–10."

Exhibit H of Subpart E [Amended]

52. In Exhibit H, paragraphs V. A. 1 and 2 are revised to read as follows:

Exhibit H of Subpart E—RRH Loans and HUD Section 8 Housing Assistance Payments Program (New Construtlon)

* * * * *

V. * * *

A. *Development Standareds.*

1. No additional requirement other than compliance with Subpart A of Part 1924 of this chapter, shall be necessary to assure that the housing is planned in accordance the applicable development standards; however, appropriate state and local laws, codes, ordinances and regulations must also be met.

2. The borrower's architect/engineer will provide a certification that the final drawings and specifications meet all applicable development standards, state and local laws, codes, ordinances and regulations.

* * * * *

Subpart J—Section 504 Rural Housing Loans and Grants

§ 1944.463 [Amended]

53. In § 1944.463, paragraph (a) is amended by changing the references from "424–66" to "1924–6," from "424–2" to "1924–2, and from "424–19" to 1924–19," respectively.

54. In § 1944.463, paragraph (b) is amended by changing the reference "Form FmHA 424–12" to "Form FmHA 1924–1."

§ 1944.463 [Amended]

55. In § 1944.463, paragraph (c)(4) is amended by changing the reference "Form FmHA 424–12" to "Form FmHA 1924–12."

§ 1944.469 [Amended]

56. In § 1944.469, paragraphs (f)(1) (i) and (ii) and (g)(1)(iii)(A) (*1*) are amended by changing the references "Form FmHA 425–12" to "Form FmHA 1924–12."

PART 1945—EMERGENCY

57. The authority citation for Part 1945 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 CFR 2.23 and 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

Exhibit A of Subpart D [Amended]

58. In Exhibit A, paragraph III, B, 7 is amended by changing the references from "424–1" and "424–2" to "1924–1" and "1924–2," respectively.

PART 1955—PROPERTY MANAGEMENT

59. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480 and 2492, 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart B—Management of Property

60. In § 1955.53, paragraph (o) is revised to read as follows:

§ 1955.53 Definitions.

* * * * *

(o) *Unsuitable property.* Property acquired pursuant to the Housing Act of 1949 that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet FmHA requirements for existing housing as described in § 1944.16(b) of Subpart A of Part 1944 of this chapter. It may be an otherwise suitable SFH property which is so poorly located it will not serve as an adequate residential unit or an older home which is excessively expensive to heat and maintain.

Date: February 17, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–5182 Filed 3–12–87; 8:45 am]

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federal register

Friday
March 13 1987

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 21

Designation of Applicable Regulations for the Type Certification and Airworthiness Certification of Special Classes of Aircraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 24804: Amdt. No. 21-60]

Designation of Applicable Regulations for the Type Certification and Airworthiness Certification of Special Classes of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amends Part 21 of the Federal Aviation Regulations (FAR) by providing procedures for the type certification and airworthiness certification of special classes of aircraft. Special classes of aircraft include gliders (including self-launching gliders), airships, and other kinds of aircraft that would be eligible for a standard airworthiness certificate but for which no airworthiness standards have as yet been established as a separate part of Subchapter C of the FAR. An example of such standards is designated in Advisory Circular (AC) 21.23-1 for the type certification of fixed-wing gliders under § 21.23. This amendment broadens the concept presently applied to gliders to include airships and future nonconventional aircraft as the need may arise. In addition, this amends §§ 21.21, 21.175(a) and 21.183 to include manned free balloons, which were inadvertently omitted in previous amendments to Part 21.

EFFECTIVE DATE: April 13, 1987.

FOR FURTHER INFORMATION CONTACT: Lyle C. Davis, Policy and Procedures Branch (AWS-110), Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267-9583.

SUPPLEMENTARY INFORMATION

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) 85-21, which was published in the Federal Register on October 18, 1985 (50 FR 42368). The NPRM revises the type certification procedural rules in portions of Subparts B and H of Part 21 of the FAR to provide a procedural basis upon which airworthiness criteria may be designated as necessary for the type certification of special classes of aircraft. When the NPRM was published, the FAA had five applications for the type certification of airships. Prior to this amendment, no procedural rules were available for airship type certification.

There are currently numerous commercial development projects related to special classes of aircraft for which application may be made for FAA type certification. Accordingly, the FAA amends § 21.17 to establish procedural requirements for the issuance of type certificates for special classes of aircraft (including airships) that comply with the applicable airworthiness standards of the FAR or such other airworthiness criteria that provide an equivalent level of safety to those standards. Means are provided to designate applicable airworthiness criteria for the type certification of special classes of aircraft by selecting appropriate provisions of the airworthiness standards currently in the FAR.

In the event that the airworthiness standards in the FAR are either inadequate or otherwise inappropriate as a certification basis for a special class of aircraft, due to its unique, novel, and/or unusual design features, other airworthiness criteria may be established if the Administrator finds that such criteria provide the special class of aircraft with a level of safety equivalent to that provided for other types of aircraft by the FAR Parts listed in Subchapter C. Such additional airworthiness criteria may be provided by an FAA AC, or, once approved by the Administrator, by a designer, manufacturer, or other person. These airworthiness criteria would be announced in the Federal Register for comment, in a manner similar to that used for AC's, prior to their initial application as the certification basis of a special class aircraft.

Notice 85-21 states that the Administrator would issue special conditions in the event that the standards in the FAR are either inadequate or otherwise inappropriate as a certification basis due to the unique, novel, and/or unusual design features for a special class of aircraft. After further review, it has been determined that it would be inappropriate to use special conditions as a part of the certification basis for special classes of aircraft.

Special conditions are issued when it is determined, during a type certification program, that the FAR do not provide adequate certification standards because of a novel or unique feature in an aircraft, aircraft engine or propeller. The process of issuing special conditions was established within the rules to ensure that a timely regulatory process existed, whereby the FAA could add to the existing airworthiness standards listed in Subchapter C, when establishing the certification basis for an aircraft, aircraft engine, or propeller. In the case of special classes of aircraft, some or all of the applicable airworthiness standards are not contained in the FAR, and are established in accordance with § 21.17 (b). In the case of airships, the FAA will issue a report containing airworthiness design criteria it considers to be appropriate for conventional state-of-the-art airships. These criteria, after publication for comment, would become the applicable airworthiness standards for conventional airships. Should an applicant propose to use those standards for an unconventional design, additional airworthiness standards may be necessary. The modified original design criteria or a completely new set of standards could be developed and approved in accordance with §21.17(b) without resorting to § 21.16 for the establishment of special conditions. Thus, while the need still exists for a process to continually update the airworthiness standards, in order to establish an appropriate certification basis for special classes of aircraft with novel and/or unique features, the process for establishing the certification basis in § 21.17(b) is sufficient to fulfill that need.

Discussion of the Amendment

Special classes of aircraft include gliders (including self-launching gliders), airships, and other kinds of aircraft that would be eligible for a standard airworthiness certificate but for which no airworthiness standards have as yet been established as a separate part of Subchapter C of the FAR. This amendment establishes procedures for the development and application of airworthiness standards and criteria for special classes of aircraft for which adequate airworthiness standards do not exist in the FAR. The use of these criteria for type certification of special class aircraft is permitted providing the Administrator finds that, to the extent that the criteria do not meet the applicable airworthiness standards cited in Subchapter C, they provide a level of safety equivalent to those standards.

New § 21.17(b) of the FAR provides a certification procedure for special classes of aircraft that previously lacked a regulatory basis for type certification. Aircraft, including the engines and propellers installed thereon, for which airworthiness standards have been issued as a separate part include: normal, utility, and acrobatic category airplanes, Part 23; transport category airplanes, Part 25; normal and transport

category rotorcraft, Parts 27 and 29; manned free balloons, Part 31; aircraft engines, Part 33; and propellers, Part 35. These Parts are used by the Administrator, to the maximum extent practicable and as considered appropriate, to designate the applicable airworthiness criteria for the type certification of special classes of aircraft, including the engines and propellers installed thereon.

Prior to this amendment, § 21.23 established type certification procedures for gliders, both powered and unpowered. In this regard, the FAA issued AC 21.23–1, which provides several acceptable means of compliance for the type certification of gliders. Section 21.23 is deleted by this amendment. However, the concept of § 21.23 is preserved in the new paragraph (b) of § 21.17, and AC 21.23–1 will be renumbered as AC 21.17(b)–1 without substantive change.

Pursuant to § 21.17(a)(1), the applicable airworthiness standards for existing type certificate applications are those in effect on the date of application. Prior to adoption of this amendment, the FAA received several applications for the type certification of airships. Since no procedural rules or appropriate regulations existed for special classes of aircraft (e.g., airships) at the time of receipt of these applications, it is appropriate to allow the applications to remain effective until 3 years after the effective date of this amendment. The applicants may also choose to reapply for a type certificate in accordance with the revised § 21.17(b).

The term "manned free balloons" was inadvertently excluded in past amendments to Part 21 with respect to the titles of §§ 21.21 and 21.183 and the first paragraph of § 21.175. Accordingly, this amendment corrects these titles and § 21.175 to include the term "manned free balloons." In effect, these paragraphs have been interpreted as also being applicable to manned free balloons. Thus, these regulatory changes have no effect on actual FAA practices. In addition, the term "special classes of aircraft" is added to the title and lead-in paragraph of § 21.21, and § 21.175(a), and to the title of § 21.183 to allow for the issuance of type and airworthiness certificates for special classes of aircraft.

To clarify that special classes of aircraft will be required to have Instructions for Continued Airworthiness similar to those required in the airworthiness standards of Subchapter C, §§ 21.31(c) and 21.50(b) are revised to specify that the Airworthiness Limitations section of the Instructions for Continued Airworthiness constitutes a part of the type design for special classes of aircraft.

There are no other substantive differences between the proposed rule and the final rule.

Discussion of Comments

Six comments were received in response to Notice 85–21, representing the views of aircraft operators, aircraft and equipment manufacturers, and private individuals. The commenters support the objectives of the notice, and some request that the proposals be expanded to provide criteria for determining the degree of specialty or uniqueness. The FAA finds that it is not practical or possible to foresee the types of special class aircraft that may evolve in the future or to attempt to formulate any criteria in anticipation of those types. While gliders and airships are cited as obvious examples of special classes of aircraft, other designs that are not obviously in one category or another will require evaluation on an individual basis.

One commenter contends that the special class aircraft category should be expanded to include small, low-powered, sport-type, aircraft in lieu of Part 23 of the FAR. The FAA intends that the special class aircraft category include those aircraft that would: (1) Be eligible for a standard airworthiness certificate; (2) not be eligible for certification under any of the parts listed in Subchapter C of the FAR due to their unique, novel, and/or unusual design features; and (3) have a level of safety equivalent to that provided by type certification under other airworthiness Parts of Subchapter C. The decision to type certificate an aircraft in either the special class aircraft category or under Part 23 of the FAR is entirely dependent upon the aircraft's unique, novel, and/or unusual design features. The level of safety for the special class aircraft category would be equivalent to that provided by Part 23 of the FAR, and, therefore, the level of safety would not enter into the selection of either of these categories in lieu of the other.

The same commenter suggested that ultralight aircraft be included in the special class aircraft category. The FAA is currently studying the petition filed jointly by the Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA) to establish a new category of aircraft entitled primary category. This proposal is envisioned to be applicable to aircraft intended for personal use, and would have simplified design requirements; simplified type certification and airworthiness certification procedures; and simplified, maintenance provisions. Ultralight aircraft would likely fall under such a primary category, if the proposal is adopted as envisioned. However, each design that is not obviously in one category or another will require evaluation on an individual basis.

In a related matter, several commenters suggest that the FAA allow type certification of a simplified aircraft both in the proposed primary category, as defined in the petition filed jointly by AOPA and EAA, and as a special class aircraft under this amendment. It is envisioned that the petitioners' proposed primary category and the special class aircraft category adopted under this amendment will apply to different types of aircraft, and will have different type certification and airworthiness certification procedures. Therefore, type certification of an aircraft in both of these categories would be inappropriate.

One commenter suggested that consideration should be given to adjusting the operating rules to accommodate the unique operating features of special classes of aircraft. Amending operating rules, which is outside of the scope of this rulemaking, would not be practical or possible at this time, since the FAA cannot accurately anticipate all of the unique operating features of future special classes of aircraft.

One commenter requests that his type of aircraft (a rotorcraft derivative) be included in the example for special classes of aircraft. The rotorcraft derivative may qualify under one of the airworthiness regulations listed in Subchapter C. Therefore, this type of aircraft would not qualify under the definition of special classes of aircraft.

Many comments were received in response to the publication of draft AC 21.17(b)–2 and FAA–P–8110–2, "Airship Design Criteria," which were published in the **Federal Register** on October 18, 1985, (50 FR 42243). Comments on the AC and the Airship Design Criteria, which are not part of this rulemaking, will be considered in the development of the final AC and Airship Design Criteria.

Planned Advisory Circular (AC) and Airship Design Criteria

The preamble of NPRM 85–21 announced the availability of proposed airship airworthiness criteria, which are contained in AC 21.17(b)–2 and FAA–P–8110–2. These are companion documents that will provide acceptable criteria for type certification of airships as

permitted by this amendment. As additional airworthiness criteria for airships are approved, AC 21.17(b)–2 will be revised to identify these criteria.

Economic Analysis

The assumptions used to support the estimates in determining the economic impact of the proposed changes to §§ 21.17, 21.21, 21.31, 21.50, 21.175, and 21.183 have been developed by the FAA. The amendments to §§ 21.175 and 21.183 are editorial and clarifying only and have no economic impact. The anticipated benefit derived from the changes to §§ 21.17, 21.21, 21.31, and 21.50 will be the potential economic value of manufacturing and operating safe airships in the United States (wages, interest, rent, and profits) while maintaining an acceptable level of public safety. Quantification of these benefits is not possible because of the highly speculative nature of potential airship markets and the undetermined time that may elapse before a type certificate is actually issued. Nonetheless, this amendment will provide for U.S. type certification of special class aircraft designs and will also encourage and reinforce commercial development of innovative and utilitarian aircraft. Manufacturers will incur administrative costs, because they will be required to submit type design drawings, test reports, and computations necessary to show proof of compliance with this amendment. The FAA estimates that this effort will involve a maximum total of $104,000 per certification. The anticipated benefits of this amendment include increased convenience and expedition in the type certification process which, in the absence of this amendment, would otherwise consume time to develop a new type certification basis for each special class of aircraft. With this amendment in place, applications for special classes of aircraft type certificates will be processed more quickly since a procedure, and possibly applicable airworthiness standards, for their type certification will already exist. We anticipate the benefits associated with the convenience afforded by this rule will outweigh the costs related to the amendment.

The FAA finds that these costs are consistent with the costs that any future applicant would incur in the process of seeking to obtain a type certificate for a special class aircraft for which no airworthiness criteria have been established in the FAR.

Trade Impact Statement

These rules will have little or no impact on trade opportunities, because newly-manufactured airships for the U.S. market, whether made by U.S. or foreign manufacturers, would have to comply with rules or other criteria which would provide an equivalent level of safety.

Conclusion

The FAA has determined that this amendment (1) is not a major rule under Executive Order 12291; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, it is certified 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, as relatively few small entities will be affected. The FAA small entity size standards criteria define a small aircraft manufacturer as an independently-owned and managed firm having fewer than 75 employees. A substantial number of entities is defined as more than ⅓ of the entities subject to the rule, but not less than 11. Under the FAA size standards, only one of the manufacturers currently applying for an airship type certificate has fewer than 75 employees. A copy of the regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, Part 21 of the Federal Aviation Regulations (14 CFR Part 21) is amended as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

The authority citation for Part 21 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub L. 97–449, January 12, 1983).

2. By amending § 21.17 by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, by amending newly redesignated paragraphs (d) introductory text and (d)(2) by replacing the reference to paragraph "(b)" with "(c)", and by adding a new paragraph (b) to read as follows:

§ 21.17 Designation of applicable regulations.

* * * * *

(b) For special classes of aircraft, including the engines and propellers installed thereon (e.g., gliders, airships, and other nonconventional aircraft), for which airworthiness standards have not been issued under this subchapter, the applicable requirements will be the portions of those other airworthiness requirements contained in Parts 23, 25, 27, 29, 31, 33, and 35 found by the Administrator to be appropriate for the aircraft and applicable to a specific type design, or such airworthiness criteria as the Administrator may find provide an equivalent level of safety to those parts.

* * * * *

3. By amending § 21.21 by revising the heading and the introductory text to read as follows:

§ 21.21 Issue of type certificate: normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; special classes of aircraft; aircraft engines; propellers.

An applicant is entitled to a type certificate for an aircraft in the normal, utility, acrobatic, commuter, or transport category, or for a manned free balloon, special class of aircraft, or an aircraft engine or propeller, if—

* * * * *

§ 21.23 [Removed and reserved]

4. By removing and reserving § 21.23.

5. By revising § 21.31(c) to read as follows:

§ 21.31 Type design.

* * * * *

(c) The Airworthiness Limitations section of the Instructions for Continued Airworthiness as required by Parts 23, 25, 27, 29, 31, 33, and 35 of this chapter, and as specified in the applicable airworthiness criteria for special classes of aircraft defined in § 21.17(b); and

* * * * *

6. By revising § 21.50(b) to read as follows:

§ 21.50 Instructions for continued airworthiness and manufacturer's maintenance manuals having airworthiness limitations sections.

* * * * *

(b) The holder of a design approval, including either the type certificate or supplemental type certificate for an aircraft, aircraft engine, or propeller for which application was made after January 28, 1981, shall furnish at least one set of complete Instructions for Continued Airworthiness, prepared in accordance with §§ 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, or 35.4 of

this chapter, or as specified in the applicable airworthiness criteria for special classes of aircraft defined in § 21.17(b), as applicable, to the owner of each type of aircraft, aircraft engine, or propeller upon its delivery, or upon issuance of the first standard airworthiness certificate for the affected aircraft, whichever occurs later, and thereafter make those instructions available to any other person required by this chapter to comply with any of the terms of these instructions. In addition, changes to the Instructions for Continued Airworthiness shall be made available to any person required by this chapter to comply with any of those instructions.

7. By revising § 21.175(a) to read as follows:

§ 21.175 Airworthiness certificates: classification.

(a) Standard airworthiness certificates are airworthiness certificates issued for aircraft type certificated in the normal, utility, acrobatic, commuter, or transport category, and for manned free balloons, and for aircraft designated by the Administrator as special classes of aircraft.

* * * * *

8. By amending § 21.183 by revising the title to read as follows:

§ 21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic, commuter, and transport category aircraft; manned free balloons; and special classes of aircraft.

* * * * *

Issued in Washington, DC on March 2, 1987.

Donald D. Engen,

Administrator.

[FR Doc. 87-4682 Filed 3-12-87; 8:45 am]

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federal register

Friday
March 13, 1987

Part V

Office of Management and Budget

Budget Rescissions and Deferrals

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, I herewith report one new deferral of budget authority totaling $134,437,367 and three revised deferrals of budget authority now totaling $649,146,654.

The deferrals affect programs in the Departments of Agriculture, Defense—Civil, and Health and Human Services.

The details of these deferrals are contained in the attached report.

Ronald Reagan

The White House,
March 4, 1987.

CONTENTS OF SPECIAL MESSAGE

[In thousands of dollars]

Deferral No.	Item	Budget authority
	Department of Agriculture:	
	Forest Service:	
D87-2A	Expenses, Brush disposal.	112,736
D87-4A	Cooperative work....	535,275
	Department of Defense—Civil:.	
	Forest and Wildlife Conservation, Military Reservations:	
D87-88	Wildlife conservation.	1,136
	Department of Health and Human Services:	
	Social Security Administration:	
D87-57	Limitation on administrative expenses (information technology systems).	134,437
	Total, deferrals....	783,584

SUMMARY OF SPECIAL MESSAGES FOR FY 1987

[In thousands of dollars]

	Rescissions	Deferrals
Fifth special message:		
New items		134,437
Revisions to previous special messages		9,916
Effects of fifth special message		144,353
Amounts from previous special messages that are changed by this message (changes noted above)		639,230
Subtotal, rescissions and deferrals		783,584
Amounts from previous special messages that are not changed by this message	5,835,751	10,673,993
Total amount proposed to date in all special messages	5,835,751	11,457,576

Supplementary Report

Report Pursuant to Section 1014(c) of Pub. L. 93–344.

This report updates Deferral No. D87–2 transmitted to Congress on September 26, 1986.

This revision to a deferral of the Department of Agriculture, Forest Service, Expenses, brush disposal account, increases the amount previously reported from $111,201,838 to $112,735,506. This increase of $1,533,668 results from the deferral of actual balances carried over from 1986.

[Deferral No: D87–2A]

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of Pub. L. 93–344

Department of Agriculture—Forest Service

Expenses, brush disposal [1]—12X5206

New budget authority (16 U.S.C. 490)	*$47,835,000
Other budgetary resources	*112,735,506
Total budgetary resources	*160,570,506
Entire year	*112,735,506

*Revised from previous report.

OMB identification code: 12–9922–0–2–302.

Grant program: No.

Type of account or fund: No-Year.

Legal authority (in addition to section 1013): Antideficiency Act.

Type of budget authority: Appropriation.

Justification: Purchasers of National Forest timber are required to deposit the estimated cost to the Forest Service for disposing of brush and other debris resulting from timber cutting operations pursuant to 16 U.S.C. 490. The deposits becoming available in the current year are estimated and the related disposal operations are planned for the following year. Efficient program planning and accomplishment is facilitated by operating a stable program well within the funds available in any one year for this purpose. Much of the brush disposal work for which fees are collected cannot be done in the same year because of weather conditions or because harvesting is not completed. The Forest Service is planning for a stable year-to-year program which will require $47.8 million in 1987. The current fiscal year reserve of $112.7 million is established pursuant to the provisions of the Antideficiency Act (31 U.S.C. 1512) as a reserve for contingencies.

Estimated Program Effect: None.

Outlay Effect: None.

Supplementary Report

Report Pursuant to Section 1014(c) of Pub. L. 93–344

This report updates Deferral No. D87–4 transmitted to Congress on September 26, 1986.

This revision to a deferral of the Department of Agriculture, Forest Service, Cooperative work account, increases the amount previously reported from $526,938,342 to $535,274,663. This increase of $8,336,321 results from the deferral of actual balances carried over from 1986.

[1] This account was the subject of a similar deferral in 1986 (D86–2A).

[Deferral No: D87-4A]

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of Pub. L. 93-344

Department of Agriculture—Forest Service

Cooperative work [1]—12X8028

New budget authority (16 U.S.C. 576b)	*$197,616,000
Other budgetary resources	*$547,795,663
Total budgetary resources	*$745,411,663
Entire year	*$535,274,663

* Revised from previous report.

OMB identification code: 12-9973-0-7-999.
Grant program: No.
Type of account or fund: No-Year.
Legal authority (in addition to section 1013): Antideficiency Act.
Type of budget authority: Appropriation.

Justification: Funds are received from States, counties, timber sale operators, individuals, associations, and others. These funds are expended by the Forest Service as authorized by law and the terms of the applicable trust agreements. The work consists of protection and improvement of the National Forest System and it benefits the national forest users, research investigations, reforestation, and administration of private forest lands. Much of the work for which deposits have been made cannot be done, or is not planned to be done, during the same year that the collections are being realized. Examples include areas where the timber operators have not completed all of the contract obligations during the year funds are deposited. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.
Outlay Effect: None.

Supplementary Report

Report Pursuant to Section 1014(c) of Pub. L. 93-344

This report updates Deferral No. D87-8A transmitted to Congress on January 5, 1987.

This revision to a deferral of the Department of Defense—Civil, Wildlife conservation account increases the amount previously reported from $1,090,024 to $1,136,485. This increase of $46,461 results from the deferral of actual balances carried over from 1986.

[Deferral No: D87-8B]

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of Pub. L. 93-344

Department of Defense, Civil (Wildlife Conservation)—Military Reservations

Wildlife Conservation, Army—21X5095

Wildlife Conservation, Navy—17X5095

Wildlife Conservation, Air Force—57X5095

New budget authority (Pub. L. 16 U.S.C. 670F)	$1,970,000
Other budgetary resources	*1,506,485
Total budgetary resources	*3,476,485
Entire year	*1,136,485

*Revised from previous report.

OMB identification code: 97-5095-0-2-303.
Grant program: No.
Type of account or fund: No-Year.
Legal authority (in addition to section 1013): Antideficiency Act.
Type of budget authority: Appropriation.
Coverage: [1]

[1] These accounts were the subject of a similar deferral in 1986 (D86-5A).

Appropriation	Account symbol	OMB identification code	Amount deferred
Wildlife Conservation, Army	21X5095	21-5095-0-2-303	$744,024
Wildlife Conservation, Navy	17X5095	17-5095-0-2-303	140,000
Wildlife Conservation, Air Force*	57X5095	57-5095-0-2-303	252,461
Total			1,136,485

*Revised from previous report.

Justification: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law—to carry out a program of natural resource conservation. These funds are being deferred because: (1) Installations may be accumulating funds over a period of time to fund a major project; (2) the installation may be designing and obtaining approval for the project; and (3) there is a seasonal relationship between the collection of fees and their subsequent expenditure. Most of the fees are collected during the winter and spring months, while most of the program work is performed during the summer and fall months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned if program requirements are identified. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.
Outlay Effect: None.

[Deferral No: D87-57]

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of Pub. L. 93-344

Department of Health and Human Services—Social Security Administration

Limitation on administrative expenses (information technology systems) [1]—75X8704

New budget authority (Pub. L. 99-500 and 99-591)	$225,398,000
Other budgetary resources	214,436,067
Total budgetary resources	439,834,067
Entire year	134,437,367

OMB identification code: 20-8007-0-7-651.
Grant program: No.
Type of account or fund: No-Year.
Legal authority (in addition to section 1013): Antideficiency Act; Pub. L. 99-500 and 99-591.[2]
Type of budget authority: Appropriation.

Justification: This account funds the lease and purchase of ADP hardware and software, ADP supplies and contractual services, major telephone system procurement, and telephone lease and maintenance costs for the Social Security Administration (SSA). All planned projects and acquisitions for Information Technology Systems resources during 1987 can be accomplished at a cost of $306 million. Other available resources will not be required for obligation during the year. The deferred funds consist of accumulated savings from delays in project awards resulting from vendor protests and the actual timing of awards, revised project and acquisition plan timetables due to delays in project awards, and awards at lower than estimated cost based on competitive procurement. These funds are reserved pending the identification of new requirements. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Subsequently, these reserves were identified as a potential source of funding for SSA pay raises. Supplemental appropriations language is currently pending to transfer $18 million from these funds for funding pay raises. If this or a similar transfer proposal is enacted, the deferral will be reduced by the amount of the enacted transfer rather than funding the transfer from the 1987 planned program level of $306 million.

Estimated Program Effect: None.
Outlay Effect: None.

[FR Doc. 87-5456 Filed 3-12-87; 8:45 am]

BILLING CODE 3110-01-M

[1] This account was the subject of a similar deferral in 1986 (D86-61).

[1] Another limitation in this same account is also the subject of a deferral (D87-12A). This account was the subject of similar deferrals in 1986 (D86-28A, D86-39 and D86-40).

[2] Another authority is: Section 201(g)(1) of the Social Security Act.

federal register

Friday
March 13, 1987

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Noise and Emission Standards for Aircraft Powered by Advanced Turboprop (Propfan) Engines; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. 25206; Notice No. 87-2]

Noise and Emission Standards for Aircraft Powered by Advanced Turboprop (Propfan) Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: The Federal Aviation Administration is considering whether rulemaking is needed to establish noise and emission standards for the type certification of civil aircraft powered by advanced turboprop (propfan) engines. These actions would involve Federal Aviation Regulation (FAR) Part 36 and Special Federal Aviation Regulations (SFAR) 27. Several types of the new engines are currently in development in the U.S. and abroad. Because of the engines' unique construction, concern exist that aircraft using them could create significant enroute noise levels on the ground. Except for the sonic booms and their secondary effects created by supersonic aircraft, neither the public nor the FAA has encountered significant noise impacts from aircraft except in the vicinity of airports. This advance notice is issued to solicit information on the need, if any, and the economic reasonableness and technological feasibility of limiting enroute noise by adding one or more measurements to the current requirements of FAR Part 36. In addition, information, data, and views are solicited on the appropriate smoke and/or gaseous emissions standards that should be applied to the certification and operation of propfan engines. SFAR 27 contains the current requirements for turboprop and turbofan engines. Since the new propfan engines have some characteristics of each, comments are solicited on which standard is appropriate for them.

DATES: Comments must be received on or before June 11, 1987.

ADDRESSES:

Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25206, 800 Independence Ave., SW., Washington, DC 20591;

Or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Ave., SW., Washington, DC 20591

Comments may be examined in the Rules Docket, weekdays except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Starley, Noise Abatement Division (AEE-100), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3553.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, view, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasonable regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the regulatory docket or notice number and be submitted in duplicate 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 Docket No. 25206." 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 by the Administrator before taking action on the proposed rule. The rulemaking concepts discussed in this advance 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 ANPRMS

Any person may obtain a copy of this advance notice of proposed rulemaking (ANPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3479. Communications must identify the notice number of this ANPRM. 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.

Advance Notice

This advance notice of proposed rulemaking is issued in accordance with the FAA's policy of early institution of public proceedings in actions related to rulemaking. An "advance" notice of proposed rulemaking is issued when it is found that the resources of the FAA and reasonable inquiry outside the FAA do not yield a sufficient basis to identify and select tentative or alternate courses of action upon which a rulemaking procedure might be undertaken, or when it would otherwise be helpful to invite early public participation in the identification and selection of such tentative or alternate courses of action. This latter purpose provides the basis for this advance notice of proposed rulemaking. Thus, this advance notice is the first step toward what may become new regulations affecting type certification and operation of future airplane types using advance turboprop (propfan) engines.

Regulatory Background

Since its adoption in 1969 (34 FR 18364, Nov. 18, 1969), Part 36 of the Federal Aviation Regulations (14 CFR Part 36) has contained noise level standards for the type certification of large (greater than 12,500 pounds, maximum takeoff weight) transport category airplanes and turbojet-powered airplanes regardless of category. FAR Part 36 contains the test conditions and methods for demonstrating compliance. It also contains the noise level limits for takeoff, approach and sideline noise measurements. Limited "tradeoffs" are allowed where the exceedances at one or two measuring points are matched by reductions of the others. These provisions are contained in Appendices A, B, and C of FAR Part 36.

Generally, the noise impacts of large transport category airplanes and turbojet-powered airplanes are limited to the areas around airports. Therefore, the FAR Part 36 noise standards applicable to those airplanes were designed to encourage the application of noise reduction technology that would be most effective during the types of operations that occur at airports, i.e., takeoffs and landings. However, some information suggests that propfan-powered airplanes could create significant noise levels during the enroute segments of their flights. For this reason, the FAA has decided to seek information and advice on the likely noise impacts of such aircrafts, on available noise reduction methods and

technologies, and on appropriate noise standards for aircraft equipped with such engines.

Technical and Regulatory Considerations

A. *Engines*—As the terms "advanced turboprop engine" and "propfan engine" are used in this ANPRM, they represent a new generation in the evolution of aircraft engines. It should not be thought of as only a single design or the product of only a single company. In fact, several manufacturers of aviation engines have their own unique versions of the basic concept. Generally, however, these designs share some fundamental characteristics. They have four to five times as many blades as a propeller on a turboprop engine, but many fewer than a conventional turbofan engine. The blades, themselves, are more rounded and swept back at the tips than either turboprop or turbonfan blades and they are variable pitch (i.e., they are not rigidly fixed in their sockets, but are allowed some change in angle to improve efficiency across a range of powers and speeds). Unlike conventional turboprop engines, some propfan engines have more than one set of blades. However, unlike the turbofan engine, the second set may be counter-rotating. Most of the new designs eliminate the fan ducts and walls, and the blades are, therefore, unshrouded and open as in a turboprop. Others may have a fan duct around the blades. Sharing as they do some characteristics of both turboprops and turbofans, they are sometimes referred to as propfans. NASA, in its research into this concept, referred to them as advanced turboprop engines.

Specifically, the FAA is seeking information on the types and sizes of aircraft on which these new engines may be used, on expected improvements in energy consumption from use of these engines, and the noise/air quality/performance/cost tradeoffs in applying the new technology.

B. *Noise*—Studies by both industry and government have shown that since the blade tip speed of propfans is subsonic during takeoff and landing, the design is expected to meet the required Stage 3 noise certification standards at the currently specified FAR Part 36 measurement points—takeoff, sideline and approach. These standards are measured as Effective Perceived Noise Levels in decibels, EPNdB. However, propfan blade tip speeds are supersonic in cruise, and the unshielded engine is several times louder than conventional turbojets in cruise flight.

FAA evaluation of studies and measurements to date indicates that the propfan engine in cruise flight may produce significantly louder noise on the ground than previous turbine powered aircraft. Estimates of noise (the A-weighted sound pressure level in decibels, dBA) at the surface from cruise flights at 30,000 feet altitude range from 54 to 75 dBA. For comparison, measurements of the noise on the ground from DC–9's at 30,000 feet range from 50 to 55 dBA. Because of the logarithmic relationship used in calculating decibels, this 10 to 15 decibel difference means that the propfan may sound more than twice as loud as conventional turbojet-powered aircraft. Further, the FAA is concerned that, like the sonic boom, the sound levels may rise by another 10 to 15 dB under certain weather conditions. It is more likely that newly-impacted areas will be in outlying areas that have not previously experienced aircraft noise problems. The only similar occurrences with which the FAA is familiar are related to the Concorde. Hundreds of complaints were filed in the New England area following the start of Concorde service. These complaints resulted from noise events associated with secondary effects of offshore sonic booms, which were significantly quieter than the noise events expected from propfan flyovers. Changes in Concorde operations eliminated complaints about secondary sonic booms.

Once engine design parameters are finalized by the engine or aircraft manufacturers, little chance of changing their acoustical output will exist and inclusion of additional acoustical material will be virtually impossible. Because the enroute noise could affect far more members of the public than noise around airports, the FAA believes that it is essential to develop the information needed to determine comprehensively whether further rulemaking is required.

The FAA seeks information and comments on the need, if any, for limiting enroute noise levels and on the appropriateness of setting certification noise level standards on propfan-powered airplanes. Specific comments are invited on the following questions:

1. Under what circumstances should the FAA consider additional (enroute) noise tests?

2. Should these tests be a part of the noise certification of the aircraft or should the engines, themselves, be noise certificated?

3. What noise units, such as dBA or EPNdB, should be used for setting limits?

4. What criteria should the FAA use in setting noise limits for propfan-powered aircraft?

5. What noise levels are acceptable on the ground under enroute aircraft flight paths?

6. Should the FAA also consider limiting aircraft noise levels during takeoff but beyond the current Part 36 noise measuring location (6500 meters from start to takeoff roll)?

As discussed above, the FAA also seeks information on the technological feasibility and economic reasonableness of establishing type certification noise standards for the advanced turboprop aircraft and/or directly on the engines themselves.

C. *Air Quality*—SFAR–27 provides for the enforcement of fuel venting and exhaust emission standards for turbine engine powered airplanes. Those standards are established by the U.S. Environmental Protection Agency (40 CFR Part 87). The present standards apply to turboprop, turbofan, and turbojet aircraft engines. The propfan engines under consideration in this Advanced Notice of Proposed Rulemaking were not addressed at the time the standards were established. The engines currently in design or development have varying degrees of similarity to both turboprop and turbofan engines. One version is a turboshaft engine driving a multi-bladed fan(s) or propeller(s) through a gearbox. This could easily be defined as a turboprop. A second version has a core gas turbine engine driving multi-bladed fans directly attached to turbine stages at the rear of the core engine. This design is often referred to as an unducted fan engine, and could be considered a variant of the turbofan engine. A third version under consideration would include a shroud or duct around the propfan which would make it almost identical to a very high by-pass ratio turbofan. As stated above, this Notice refers generically to all three types as advanced turboprop or propfan engines.

The present emission standards for turboprop engines and turbofan engines differ widely. The prohibition of fuel venting applies equally to both types of engines, but that is the only common standard. Turboprop engines with a maximum rated power output of greater than 1000 kilowatts are required to meet only a smoke standard. That standard is a function of maximum rated power output measured in kilowatts, the metric equivalent of horsepower. Turbofans, by contrast, are required to meet a different smoke standard, and if their maximum rated thrust exceeds 6000 pounds, must also comply with an unburned hydrocarbon standard. Both of these standards are mathematical functions of

maximum rated thrust. There is no direct equivalency between kilowatts (horsepower) and thrust. The standards that apply, the levels of those standards, and the methods of measurement of test procedures could vary widely depending on how a propfan engine is defined and the design of a particular engine type. Even if a common agreement can be reached to classify propfan engines as either turboprop engines or as turbofan engines, all such engines may not be susceptible to satisfactory testing by the procedures set forth in 40 CFR Part 87.

The EPA, in establishing emission standards for aircraft and aircraft engines, set forth the broad engine type categories, but it is left to the FAA as the enforcement agency to determine into which, if any, of those categories a particular engine type may fall. The FAA also has the delegated authority to approve alternate test procedures, after consulting with the EPA, if the existing test procedures are not appropriate for a particular engine type. The FAA does not have the authority to change the existing standards or create new engine categories and standards. The FAA can, and we believe should, make technical recommendations to the EPA if changes to the standards are appropriate.

FAA now seeks comments and recommendations on classification of propfan engines for purposes of determining applicable enforcement of emission standards. Specific comments are invited on the following questions:

1. Should propfan engine emissions be regulated under the existing U.S. EPA standards for aircraft and aircraft engines?

2. Which standards, (i.e. turboprop or turbofan) should apply or should the applicable standard vary with engine design type?

3. Should a new classification be established for advance turboprop engines?

4. If a new classification is established, what standards should be established?

5. What criteria should be used to differentiate turboprop, turbofan, and propfan engines?

Any recommendation should consider the equitableness, economic reasonability and technical feasibility, and environmental impact of the proposed standards.

Economic Impacts and Benefits

Public comments concerning the economic impact and benefits are specifically sought in addition to comments on the technical aspects of the proposed noise and air quality standards.

Agencies of the Federal government are required by Executive Order 12291 to examine any proposed regulation to ascertain its economic impact and to adopt only those regulatory programs in which potential benefits to society clearly outweigh the potential costs to society. Any regulatory proposal by the FAA must be accompanied by an evaluation quantifying and/or qualifying, to the extent possible, the benefits and cost of such proposals. Although the FAA does not have sufficient information to generate definitive costs at this time, preliminary evaluation indicates that this ANPRM is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; Feburary 26, 1979). A complete cost evaluation will be prepared prior to issuance of any proposed rule.

Therefore, it is essential that comments on the issues discussed here include the economic impact as perceived by the commenter.

List of Subjects in 14 CFR Part 36

Aircraft certification, Aircraft noise levels, Subsonic aircraft.

The authority citation for Part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 43212 et seq.; Sec. 124 of Pub. L. 08-473, E.O. 1154, 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

Issued in Washington, DC, on March 6, 1987.

Norman H. Plummer,

Director of Environment and Energy.

[FR Doc. 87-5364 Filed 3-12-87; 8:45 am]

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Vol. 52, No. 49

Friday, March 13, 1987

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