4-9-87
Vol. 52 No. 68
Pages 11453-11610

federal register

Thursday
April 9, 1987

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

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

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

Contents

Federal Register

Vol. 52, No. 68

Thursday, April 9, 1987

Separate Parts In This Issue

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.

3 CFR
Proclamations:
5625 11453

7 CFR
1040 11455
1951 11456
Proposed Rules:
1046 11475

10 CFR
Proposed Rules:
2 11475

12 CFR
Proposed Rules:
325 11476
337 11492

15 CFR
399 11457
Proposed Rules:
7 11498
280 11498

17 CFR
241 11458

20 CFR
655 11460

23 CFR
Proposed Rules:
655 11502

24 CFR
511 11466
Proposed Rules:
511 11598

25 CFR
120 11467
Proposed Rules:
40 11503

29 CFR
33 11600
Proposed Rules:
1601 11503

33 CFR
Proposed Rules:
60 11506
62 11506
66 11506
100 11506
110 11512

40 CFR
Proposed Rules:
261 11513
300 11513

42 CFR
Proposed Rules:
405 11517

46 CFR
401 11468
Proposed Rules:
382 11518

47 CFR
73 (6 documents) 11471–11473
74 11474
Proposed Rules:
1 11519
21 11519
73 (5 documents) 11519–11521
74 11519
94 11519

50 CFR
663 11473

Federal Register
Vol. 52. No. 68
Thursday, April 9, 1987

Presidential Documents

Title 3—

The President

Proclamation 5625 of April 6, 1987

Know Your Cholesterol Week, 1987

By the President of the United States of America

A Proclamation

Heart disease and heart attacks are the primary cause of death among Americans. Scientific research has clearly established elevated blood cholesterol as one of the three major modifiable risk factors for coronary heart disease. Research has also demonstrated the encouraging news that people can reduce their risk of heart disease by lowering high blood cholesterol.

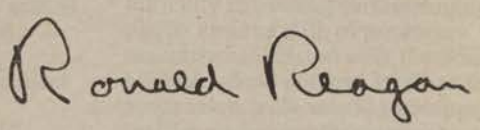
Having blood cholesterol checked is the only way to know whether we are at high risk or not. The testing of cholesterol level is the first step toward identifying and controlling a serious condition that is a major contributor to America's number one killer.

More than 20 medical, public health, and voluntary health organizations have joined with the National Heart, Lung, and Blood Institute to form the National Cholesterol Education Program. These and other organizations have endorsed "Know Your Cholesterol" as an educational theme of this national effort.

The Congress, by Public Law 100–13, has designated the week of April 5 through April 11, 1987, as "Know Your Cholesterol Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of April 5 through April 11, 1987, as Know Your Cholesterol Week. I urge all Americans to become familiar with the dangers of high blood cholesterol and to take steps to determine their cholesterol levels and discuss the implications of their cholesterol measurement at their next visit to their doctor.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.



[FR Doc. 87–8046
Filed 4–7–87; 3:10 pm]
Billing code 3195-01–M

Rules and Regulations

Federal Register
Vol. 52, No. 68
Thursday, April 9, 1987

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

Milk in the Southern Michigan Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends for the month of March 1987 the requirement in the Southern Michigan Federal milk order that a supply plant operator ship at least 30 percent of its receipts of Grade A milk to distributing plants. The suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The action is needed to avoid inefficient handling of milk merely for the purpose of qualifying for pool participation.

EFFECTIVE DATE: April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 11, 1987; published March 16, 1987 (52 FR 8074).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b) the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southern Michigan marketing area (7 CFR Part 1040).

Notice of proposed rulemaking was published in the **Federal Register** on March 16 (52 FR 8074), concerning a proposed suspension of certain provisions of the order. Interested persons were afforded an opportunity to file written data, views, and arguments thereon. Only one comment was received and that comment was in support of the suspension.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the month of March 1987 the following provisions of the order (7 CFR Part 1040) do not tend to effectuate the declared policy of the Act:

1. In § 1040.7(b)(1) the words "each month not less than 30 percent of the total quantity of" and "received at such plant from producers and from a handler described in § 1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in § 1040.9(b)) pursuant to § 1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant,".

As suspended, that paragraph for the term of the suspension reads "A supply plant from which Grade A milk is transferred to plants described in paragraph (b)(5) of this section subject to the following conditions:"

2. In § 1040.7(b)(1), paragraph (i).

Statement of Consideration

This action makes inoperative for the month of March 1987 the provisions requiring a supply plant operator to ship at least 30 percent of its receipts of Grade A milk to distributing plants. The suspension was requested by Michigan Milk Producers Association (MMPA), which represents producers supplying the market.

This action is needed because demands of the fluid market have declined dramatically during February and no improvement was expected in March. Thus, MMPA has found it necessary to divert milk supplies routinely associated with the fluid market to manufacturing plants in order to accommodate milk shipments from a proprietary handler supply plant unit. The suspension is needed to make inoperative the qualification provisions which require a unit of supply plants consisting of one or more plants to ship or divert 30 percent or more of the Grade A milk received at or diverted from the plants that make up the unit. With the suspension, any level of shipments from any or all plants in the unit would satisfy the qualification provisions of the order for the month of March 1987. This will ensure continued pooling of the plants since the order provides that if a supply plant qualifies as a pool plant for the months of October through March, then the plant automatically qualifies as a pool plant for the months of April through September.

The suspension was supported by the Independent Cooperative Milk Producers Association. Together with the proponent, these two cooperatives represent more than 80 percent of the producers in this market.

It is inappropriate, in view of the circumstances cited above, to require a supply plant operator to ship at least 30 percent of its Grade A receipts to distributing plants in order to pool milk associated with a supply plant for the month of March.

If the provisions were not suspended for the month of March 1987, MMPA likely would encounter considerable difficulty in pooling certain supply plants and the milk of producers regularly associated with the Southern Michigan fluid market. Without the suspension, milk would be shipped in an inefficient and costly manner to assure its continued pooling under the order. This would not serve to promote the orderly marketing of milk in the Southern Michigan marketing area

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions in the marketing area in that substantial quantities of milk from producers who are associated with the market

otherwise could be excluded from the marketwide pool, or else the milk would have to be shipped in an inefficient and costly manner, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1040

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following language in § 1040.7(b)(1) of the Southern Michigan order is hereby suspended for the month of March 1987, as follows:

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. The authority citation for 7 CFR Part 1040 continues to read as follows:

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

§ 1040.7 [Amended]

2. In 7 CFR Part 1040, the following words in § 1040.7(b)(1) are suspended, "each month not less than 30 percent of the total quantity of" and "received at such plant from producers and from a handler described in § 1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in § 1040.9(b)) pursuant to § 1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant,".

3. In 7 CFR Part 1040, paragraph (i) in § 1040.7(b)(1) is suspended.

Effective date: April 9, 1987.

Signed at Washington, DC, on April 3, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87–7862 Filed 4–8–87; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1951

Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its account servicing regulations to implement provisions of the Food Security Act of 1985. The intended effect is to provide borrowers of loans made and insured under the Consolidated Farm and Rural Development Act an annual detailed statement of their accounts upon request.

EFFECTIVE DATE: April 9, 1987.

FOR FURTHER INFORMATION CONTACT: John E. Distler, Chief, Accounting Systems Planning and Design Branch I, Accounting Systems Planning Division, USDA, 1520 Market Street, St. Louis, MO 63103, Telephone (314) 425–4458.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal agency management.

The creation of a loan summary statement is required for the loan programs listed in the Catalog of Federal Domestic Assistance under titles and numbers as follows: Farm Ownership Loans, 10.407; Farm Operating Loans, 10.406; Emergency Loans, 10.404; Soil and Water Loans, 10.416; Water and Waste Disposal Systems for Rural Communities, 10.418; and Community Facilities Loans, 10.423.

The first three of these listed programs are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

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

The Food Security Act of 1985 (Pub. L. 99–198) requires that FmHA furnish to a borrower, upon their request, a loan summary statement for any loan made or insured under the Consolidated Farm and Rural Development Act. The loan summary statement will provide a detailed status of each loan for the loan summary period. Since the enactment of the Food Security Act of 1985 did not coincide with FmHA's accounting reporting periods, the history for the period December 22, 1985, through December 31, 1985, is not available. However, the borrower received an annual statement of loan account in January 1986 which reflected the activity on loans for calendar year 1985. This included the activity for the period December 22, 1985, through December 31, 1985.

Since the loan summary statement is a new requirement, the beginning balances are also not available. Therefore, the initial loan summary statement will not include beginning balances. However, all subsequent loan summary statements will reflect the balance due at the beginning of the current loan summary period. In addition, the annual statement of loan account the borrower received in January 1986 did include the unpaid principal balance on the borrower's account as of December 31, 1985.

The statement will reflect the details of each loan for the summary period, including the interest rate, outstanding principal due at the beginning of the period, amount of payments made during the period, amount due at the end of the period, allocation of payments, total amount due on all loans at the end of the period, any delinquency, a schedule of payments due, and the manner in which the borrower may obtain more information on the status of each loan. As of December 31 of each year, a hard-copy report will be produced and forwarded to field offices to be retained in the borrower's file. In addition, at the end of each calendar quarter, a cumulative report will be produced on microfiche and retained in the Finance Office. These loan summary statements will be created by the Agency's automated accounting system. The loan summary period will begin on January 1, 1986, or the date of issuance of the last loan summary statement and end on the date of issuance of the current loan summary statement.

This change in regulations is being made to advise FmHA field offices of the procedures to be followed when a borrower requests a loan summary statement. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and the opportunity for comment are not required; this rule may be made effective less than 30 days after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1951

Account servicing, Credit, Loan Programs—Agriculture, Loan Programs—Housing and Community Development, Mortgages, Reporting and recordkeeping requirements, Rural areas.

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

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 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 7 CFR 2.70.

Subpart A—Account Servicing Policies

2. Section 1951.7 is amended by adding paragraph (h) to read as follows.

§ 1951.7 Accounts of borrowers.

* * * * *

(h) *Loan summary statements.* Upon request of a borrower, FmHA issues a loan summary statement that shows the account activity for each loan made or insured under the Consolidated Farm and Rural Development Act.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards annual loan summary statements to field offices for all loans made or insured under the Consolidated Farm and Rural Development Act. Retain calendar yearend Forms FmHA 389–777 , "Loan Summary Statement," in borrower files as a permanent record of borrower account activity for the year.

(2) Quarterly loan summary statements are retained in the Finance Office on microfiche. These quarterly statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. County supervisors may request copies of these quarterly or annual statements by sending Form FmHA 1951–57, "Request for Loan Summary Statement," to the Finance Office.

(3) A county supervisor, at the request of a borrower, copies the applicable loan summary statement and provides the copy to the borrower. Attach a copy of Form FmHA 1951–58, "Basis for Loan Account Payment Application for Farmer Program Loans,"and a copy of the promissory note showing borrower installments to each loan summary statement provided to the borrower.

Subpart E—Servicing of Community Program Loans and Grants

3. Section 1951.207 is amended by adding paragraph (l) to read as follows.

§ 1951.207 General servicing actions.

* * * * *

(l) *Loan summary statements.* Upon request of a borrower, FmHA issues a loan summary statement that shows the account activity for each loan made or insured under the Consolidated Farm and Rural Development Act.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards annual loan summary statements to field offices for all loans made or insured under the Consolidated Farm and Rural Development Act. Field offices will also receive a listing of principal installments due for community program loans with unamortized installments. Retain calendar yearend Forms FmHA 389–777, "Loan Summary Statement," in borrower files as a permanent record of borrower account activity for the year.

(2) Quarterly loan summary statements are retained in the Finance Office on microfiche. These statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. Servicing offices may request copies of these quarterly or annual statements by sending Form FmHA 1951–57, "Request for Loan Summary Statement," to the Finance Office.

(3) A field office, at the request of a borrower, copies the applicable loan summary statement and provides the copy to the borrower. Upon a borrower's request a servicing office will also provide an explanation of the basis for the application of payments made by the borrower. Community program borrowers with amortized payments will receive a copy of their debt instrument not showing the borrower installments. Borrowers with unamortized debt instruments will receive a copy of "Principal Installments for Community Program Loans With Unamortized Installments" which will be provided to the borrower along with their Form FmHA 389–777.

Dated: February 26, 1987.

Eric P. Thor,

Acting Administrator, Farmers Home Administration.

[FR Doc. 87–7938 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 61219–6219]

15 CFR Part 399

PRC Advisory Notes: Amendments Based on COCOM Review

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which identifies those commodities subject to Department of Commerce export controls. The "Advisory Notes" in various entries of the CCL list those commodities covered by a particular entry that are more likely to be approved for export than others.

This rule adds three Advisory Notes covering the export to the People's Republic of China of various commodities, including the following:

Certain semi-conductor photodiodes covered by entry 1548A of the CCL;

Certain non-ruggedized cinema recording cameras covered by entry 1585A; and

Certain types of monocrystalline silicon covered by entry 1757A.

In addition, the heading for entry 1564A, which sets forth the types of equipment controlled by that entry, is revised.

These amendments result from the review of the system of strategic export controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM).

EFFECTIVE DATE: This rule is effective April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Donald Hammond, Electronic Components and Instrumentation Tech Center, Department of Commerce, Washington, DC, Telephone: (202) 377–3073, for questions on electronics and precision instruments. For questions on compounds and materials covered by entry 1757A of the Commodity Control List, contact Jeff Tripp, Capital Goods Tech Center, Department of Commerce, Washington, DC, Telephone: (202) 377–1309.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these

APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

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

4. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 15 CFR Part 399

Exports, reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 (October 2, 1986); E.O. 12571, October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1548A is amended by adding an Advisory Note at the end of the entry, reading as follows:

1548A Photosensitive components, including linear and focal plane arrays, and dice and wafers therefor.

* * * * *

(Advisory) Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of semiconductor photodiodes for previously approved and installed Western civil communications equipment with a response time constant of 0.5 ns or more and with a peak sensitivity at a wavelength neither longer than 1,350 nm nor shorter than 300 nm.

(Note: The photodioides will be supplied on a replacement basis with no enhancement of the system.)

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precisions Instruments), ECCN 1564A is amended by revising the heading of the Advisory Note for the People's Republic of China to read as follows:

1564A Electronic component assemblies, sub-assemblies, printed circuit boards, substrates and microcircuits, including packages therefor.

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "assemblies", printed circuit boards and integrated circuits not specially designed to military standards for radiation hardening and temperature, as follows:

* * * * *

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1585A is amended by adding an Advisory Note at the end of the entry, reading as follows:

1585A Photographic equipment.

* * * * *

(Advisory) Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of non-ruggedized cinema recording cameras, controlled by sub-paragraph (a) of this ECCN 1585A, for normal civil purposes.

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1757A is amended by adding an Advisory Note at the end of the entry, reading as follows:

1757A Compounds and materials as described in this entry.

* * * * *

(Advisory) Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of monocrystalline silicon, as follows:

(a) N-type, crystal orientation 1–1–1 with a resistivity not exceeding 100 ohm.cm;

(b) P-type, crystal orientation 1–1–1 with a resistivity not exceeding 5 ohm.cm.

Dated: April 6, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–7908 Filed 4–8–87; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Rel. No. 34–24296]

Interpretive Release Relating To Tender Offers Rules

AGENCY: SEC.

ACTION: Interpretation.

SUMMARY: The Securities and Exchange Commission today authorized the issuance of its views with respect to the disclosure and dissemination of material changes in the information in tender offer materials previously provided to security holders, in accordance with Rules 14d–d(c) [17 CFR 240.14d(c)] and 14d–6(d) [17 CFR 240.14d–6(d)] of Regulation 14D, applicable to third-party tender offers, and Rule 13e–4 (d)(2) and (e)(2) [17 CFR 240.13e–4 (d)(2), (e)(2)], applicable to issuer tender offers. This release will provide guidance to the public and assist persons subject to the tender offer rules in complying with applicable requirements.

FOR FURTHER INFORMATION CONTACT: Persons with questions concerning the subject matter of this release or the operation of the tender offer rules should contact David A. Sirignano or Bradley D. Belt at (202) 272–3097 or Larry E. Bergmann at (202) 272–2874.

SUPPLEMENTARY INFORMATION: On July 11, 1986 the Commission issued Release No. 34–23421 (51 FR 25873), which announced the adoption of the all-holders and best-price amendments to the tender offer rules. In addition, *inter alia*, the Commission at that time amended existing rules concerning minimum offering periods to require that a tender offer would be required to remain open for ten business days upon the announcement of an increase or decrease in (i) the percentage of securities being sought or (ii) the consideration offered by the offeror. The Commission expressed the view that the minimum time period an offer must remain open following other material changes in the terms of the offer or information concerning the offer will depend on the facts and circumstances, including the degree of significance of

the information and the appropriate manner of dissemination.

I. Introduction

The tender offer rules promulgated under the William Act are designed to ensure that security holders have appropriate information about the terms of the offer and sufficient time to consider such information in deciding whether to tender, sell in the market, or hold their securities. In promulgating these rules, the Commission recognized that the fluid, dynamic nature of corporate control contests could result in changed market conditions and revisions in the terms of a tender offer, which could have an impact on the investment decisions of security holders. Therefore, the rules require that material changes in the information published, sent, or given to security holders be disclosed and that the new information be disseminated in a manner reasonably designed to inform security holders of the change. The disclosure and dissemination requirements will not be effective unless security holders have sufficient time to consider and react to the new information. In two recent tender offers, a material change to a condition of the offer, specifically, a waiver of a minimum share condition, has been attempted on the last day of the offer without adequate dissemination to shareholders or time for the shareholders to determine whether to hold, sell, tender, or withdraw based on the new information.

The Commission is issuing this release to clarify its view that a waiver of a minimum share condition is a material change in the terms of an offer and to reiterate its view that compliance with Rules 14d–4(c) and 14d–6(d) and 13e–4 (d)(2) and (e)(2) requires that material changes be disseminated in a manner reasonably calculated to inform security holders of such changes and with sufficient time for security holders to absorb such new information. Thus, if a bidder makes a material change near or at the end of its offer, it will have to extend the offer to permit adequate dissemination. The obligation to provide security holders the information and time to act is not avoided by reserving the right to make the change in the initial tender offer materials. Statements in tender offer materials which state that a material change may be made without further notice or extension are misleading.

II. Discussion

A. Material changes

The Williams Act and rules are designed to ensure that security holders confronted with a tender offer for their shares of the subject company have adequate information upon which to base their investment decisions,[1] and sufficient time in which to determine whether to tender, sell, or hold their securities.[2] In section 14(d)(1), Congress required that, at the time the offer is first published, sent, or given to security holders, an offeror provide investors with appropriate disclosures about the terms of the offer, the offeror's plans or proposals with respect to the subject company, and other information concerning the offer.

In fashioning a comprehensive framework for the regulation of tender offers, Congress recognized that not all the details of the contemplated system could or should be delineated in statutory provisions. Thus, Congress vested the Commission with broad rulemaking authority to establish standards to govern the conduct of tender offers. Completion of the regulatory system was left to Commission rulemaking so that the Commission could make the disclosure meaningful and effective and could adjust the legal requirements to meet the "very fast changing phenomena" in tender offer practice.[3]

In promulgating the rules and regulations under the Williams Act, the Commission recognized that there could be changes in the information published, sent, or given to security holders that could affect their investment decisions. Accordingly, in adopting Regulation 14D and Rule 13e–4, the Commission included provisions requiring the disclosure and dissemination of such changes, where material. Rules 14d–6 and 13e–4(d) establish the disclosure requirements for bidders in making tender offers. Paragraphs 14d–6(d) and 13e–4(d)(2) thereunder, respectively, obligate the offeror to disclose material changes. Rule 14d–6(d) provides:

> *Material changes.* A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.

Similarly, Rule 13e–4(d)(2) states:

> If a material change occurs in the information previously disclosed to security holders, the issuer or affiliate shall disclose promptly such change in the manner prescribed by (e)(2) of this section.

Rules 14d–4 and 13e–4(e) specify the procedure by which offerors may disseminate the information required to be disclosed. Rule 14d–4(c) establishes the manner in which material changes in third-part offers are to be disseminated to security holders:

> *Publication of changes.* If a tender offer has been published or sent or given to security holders by one or more of the methods enumerated in paragraph (a) of this section, a material change in the information published, sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change * * *.

Rule 13e–4(e)(2) provides the dissemination requirement for issuer tender offers:

> If a material change occurs in the information published, sent or given to security holders, the issuer or affiliate shall disseminate promptly disclosure of such change in a manner reasonably calculated to inform security holders of such change.

Changes that most directly impact the security holder's investment decision are those with respect to the consideration offered and the number of shares sought. Changes in these terms are addressed by Rule 14e–1(b), as amended in July 1986, which provides that:

> no person who makes a tender offer shall * * * [i]ncrease or decrease the percentage of the class of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders * * *.

The tender offer provisions do not specifically establish a minimum time period with respect to disclosure and dissemination of other material changes. Given the continually evolving nature of tender offer practice, it is impracticable to delineate every possible material change, its degree of significance, or the requisite time period attendant to that change. However, disclosure and dissemination of material changes must

---

[1] *Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 58 (1975). *See also* S. Rep. No. 550, 90th Cong., 1st Sess. 3 (1967).

[2] Rule 14e–1(a) [17 CFR 240.14e–1(a)]requires tender offers to be held open for a minimum of 20 business days.

[3] Hearings on S. 510 Before the Securities Subcommittee of the Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 30 (1967).

allow security holders the opportunity effectively to consider such information and factor it into the decision whether, to tender shares, withdraw shares already tendered, sell into the market, or hold their shares.[4]

Judicial decisions have discussed the time necessary for security holders to obtain information and react to it in both the tender offer and proxy areas.[5] As stated in the Commission's release announcing adoption of the recent all-holders and best-price and other related amendments to the tender offer rules:

> As a general rule, the Commission is of the view that to allow dissemination to shareholders "in a manner reasonably designed to inform [them] of such change" (17 CFR 240.14d–4(c)), the offer should remain open for a minimum of five business days from the date that the material change is first published, sent or given to security holders. If material changes are made with respect to information that approaches the significance of price and share levels, a minimum period of ten business day may be required to allow for adequate dissemination and investor response. Moreover, the five business day period may not be sufficient where revised or additional materials are required because disclosure disseminated to security holders is found to be materially deficient. Similarly, a particular form of dissemination may be required. For example, amended disclosure material designed to correct materially deficient material previously delivered to security holders would have to be delivered rather than disseminated by publication.[6]

B. Reservations of Rights

Tender offer materials typically contain various reservations of rights whereby the bidder reserves the right to, among other things, extend or terminate the offer, waive conditions, increase or decrease the consideration offered or the number of shares being sought, or otherwise alter terms. The Commission recognizes that such reservations are an acceptable means of permitting the bidder to take action varying the terms of an offer, so long as the action taken would not contravene the Williams Act and rules. Nevertheless, for disclosure and dissemination purposes, the actual exercise of the right to modify the offer has a significance that is independent of the reservation of that right. Under the Williams Act, and the rules and regulations thereunder, shareholders are entitled to base their investment decision on the current terms of the offer. Thus, reservation of a right to change an offer does not render an otherwise material change immaterial and does not obviate the need for dissemination.

In this regard, the Commission specifically notes its view that a waiver by the offeror of the number of shares it has set as its fixed minimum is material and that the reservation of the right to waive such a minimum share condition does not render such waiver, when effected, immaterial. Further, the Commission is of the view that, when an offer to purchase states that the bidder reserves the right to waive a minimum share condition or other material term of the offer without notice or extension, the provision will be misleading to security holders.

Dated: April 3, 1987.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–7956 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

[4] The Commission expressed this view in its amicus brief filed in the Seventh Circuit in *McDermott, Inc v. Wheelabrator- Frye, Inc.*, 649 F. 2d 489 (7th Cir. 1980). The Commission stated that a press release by the bidder on the last day of its offer, announcing an increase in the number of shares it would accept (a situation now addressed by Rule 14e–1(b)), "did not permit dissemination of the material change by means of adequate publication in a newspaper of national circulation on [that day." Brief at 20. The Commission endorsed "a brief extension of the tender offer so as to permit adequate dissemination of the material change to security holders and an opportunity for them to react to it." *Id.* The court, in overturning the preliminary injunction entered by the lower court, determined, without specifically deciding the issue, that sufficient dissemination had been achieved by the time of its expedited decision (six days from the press release date). 649 F.2d at 493.

[5] In the tender offer area, see *Electronic Specialty Co. V. International Controls Corp.*, 409 F.2d 937, 944 (2d Cir. 1969) (describing district court opinion declining to order divestiture of shares acquired in tender offer or to enjoin voting and holding that withdrawal offer lasting for eight days afforded equivalent relief to rescission offer); *Pabst Brewing Co. v. Kalmanovitz*, 551 F. Sup. 882, 893 (D. Del. 1982) (four business days sufficient time to disseminate disclosure relating to financial condition of individuals who were bidders in an any and all cash offer); *Nicholson File Co. v. H.K. Porter Co.*, 341 F. Supp. 508 (D.R.I. 1972), *aff'd.* 482 F.2d 421 (1st Cir. 1973) (curative letter and rescission offer mailed within seven days of a tender offer withdrawal date sufficient to counter any effect of misstatement). In the proxy area, see *In re Anderson, Clayton Litigation*, 519 A. 2d 669, 679 (Del. Ch. 1986) (three busines day solicitation period found not sufficient to allow security holders a reasonable opportunity to receive and consider additional soliciting material prior to the meeting). *See also Smith V. Van Gorkom*, 488 A. 2d 858, 893 (Del. 1985) ("In an appropriate case, an otherwise candid proxy statement may be so untimely as to defeat its purpose of meeting the needs of a fully informed electorate"); Securities Exchange Act Release No. 16343 (November 15, 1979) (Commission report under Exchange Act Section 21(a), stating that when facts change prior to meeting, appropriate steps should be taken to disseminate complete and accurate information to security holders; possibilities to be considered include postponing the meeting, sending a letter to all security holders advising them of the changes that have been made, revising the proxy statement and resoliciting proxies, and/or offering new proxy cards).

[6] Rel. No. 34–23421 (July 11, 1986) at n. 70.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging; Adjustments to Piece Rates

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is amending the temporary alien agricultural and logging labor certification regulations to change the procedures for adjustment of piece rates employers offer and pay their United States and alien workers. The rule requires each piece rate to be no less than the prevailing piece rate for the crop activity in the area of intended employment. It also sets limitations on minimum productivity standards. The effect of this change is to eliminate the confusion created by the ambiguous, unclear nature of the previous provision.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening. Telephone: 202–535–0163.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 5, 1986, the Department of Labor (DOL) published in the **Federal Register**, at 51 FR 20516, a proposed rule to amend the temporary alien agricultural and logging labor certification regulations regarding piece rates which employers seeking temporary alien labor certification offer and pay their U.S. and alien workers. Interested persons were requested to submit written comments by July 7, 1986. The comment period subsequently was reopened on August 8, 1986, for an additional thirty days in response to requests from the public. (51 FR 28599 (August 8, 1986)). This document adopts the proposed rule as the final rule.

II. Temporary Alien Labor Certification Process

Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Commissioner of the Immigration and Naturalization Service (INS). 8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c); 8 CFR 2.1. Pursuant to the requirement in 8 U.S.C 1184(c) that the Attorney General

consult with appropriate agencies of the Government concerning the importation of nonimmigrant (so called "H–2") workers, INS has determined that prior to granting or denying such a petition, it first will request the DOL to advise INS on the availability of qualified United States workers for the jobs offered to the H–2 aliens, and whether the wages and working conditions attached to such a job offer will adversely affect similarly employed U.S. workers.

Pursuant to the INS regulations, the Employment and Training Administration (ETA) has published regulations at 20 CFR Part 655, Subpart C, for the certification of temporary employment of nonimmigrant aliens in agriculture and logging in the United States. DOL has determined that similarly employed U.S. workers have been adversely affected by the importation of nonimmigrant aliens in agricultural employment. It has been determined further that employment of those aliens in a number of States at wages below specially computed adverse effect wage rates (AEWRs) would adversely affect the wages and working conditions of similarly employed U.S. workers. 20 CFR 655.202(b)(9) and 655.207.

III. Piece rates in the H–2 Program

Many employers who seek certification to employ foreign workers use the piece rate method of paying workers. The DOL regulation currently in effect on piece rates under this program provides that:

> [i]n any year in which the applicable adverse effect rate is increased, employers shall adjust their piece rates upward to avoid requiring a worker to increase his or her productivity over the previous year in order to earn an amount equal to what the worker would earn if the worker were paid at the adverse effect rate.
>
> [20 CFR 655.207(c) (1983); see 43 FR 10306, 10317 (March 10, 1978).]

Historically, DOL has determined that workers should not be required to increase their level of productivity in order to earn, at a minimum, the hourly AEWR. See, *e.g.*, 20 CFR 655.207(c) (1983); 20 CFR 602.10b(a)(2) (1971). Conversely, if the employer's piece rate for a particular crop activity allowed the average worker to receive earnings at or above the AEWR, that piece rate has been acceptable. Thus, if average hourly earnings for the average worker in the preceding year equalled or exceeded the applicable AEWR, the piece rate for the crop activity did not need to be raised. This interpretation of DOL's regulation on piece rates was reflected in its issuance to ETA Regional Offices and to State Job Service Agencies in General Administration Letter (GAL) No. 46–81, Issued in September 1981.

In 1982 and 1983, the U.S. District Court for the District of Columbia, in two orders resulting from a suit filed by farmworkers (*NAACP, Jefferson County Branch* v. *Donovan*), issued an interpretation of the established regulation which differed with the Department's original intent in promulgating it. 566 F.Supp. 1202 (D.D.C. 1983); and 588 F.Supp. 218 (D.D.C. 1982). The court ruled and ordered that the piece rates be increased each time the AEWRs are increased, based upon productivity in the specific crop activity in 1977, or the first year after 1977 in which the employer first entered the program. The 1977 productivity rate is determined by dividing the 1977 AEWR by the piece rate paid for that crop activity. Under this formula, the current piece rate would be equal to the current AEWR divided by the 1977 productivity rate or the 1977 piece rate increased by the same percentage as the increase in the AEWR since 1977.

Under the court's interpretation, employers who had paid a higher than average piece rate in 1977, and whose workers received, at the time, earnings above the adverse effect level, would have been bound to maintain their workers at levels of earnings above the hourly AEWR required by 20 CFR 655.207. In order to clarify its original intent, DOL promulgated a revised rule ((20 CFR 655.207(c) (1985)); 48 FR 40168 (September 2, 1983)) to reinstate and to reflect the original intent.

However, in *NAACP, Jefferson County Branch* v. *Brock*, 765 F. 2d 1178 (D.C. Cir. 1985, *rev'g*, Civ. No. 82–2315 (D.D.C. August 15, 1984), the D.C. Circuit ruled that DOL had not sufficiently identifed and justified a change in policy as required by the Administrative Procedure Act. This had the effect of reinstating the piece rate regulation at 20 CFR 665.207(c) as published in the **Federal Register** at 43 FR 10317, on March 19, 1978, and interpreted by the U.S. District Court for the District of Columbia in its 1982 and 1983 orders (556 F. Supp. 1202 and 558 F. Supp. 218). See *NAACP, Jefferson Country Branch* v. *Brock*, Civ. No. 82–2315, final order and judgment (D.D.C. August 21, 1985). Subsequent to this development, ETA took steps to abide by the interpretation of the court and to condition 1985 temporary alien agricultural labor certifications upon employer's assurances to pay piece rates computed according to the DC District Court's interpretations.

IV. Considerations Involved in Reviewing Piece Rate Regulation

A DOL/USDA interagency task force was established to examine possible alternatives to the current piece rate regulation at 20 CFR 655.207(c).

A number of considerations involving basic H–2 program objectives, administrative feasibility and economic factors were carefully weighed in reviewing the piece rate issue. The major ones were:

1. Under the Immigration and Nationality Act and INS regulations, DOL has a mandate to protect the wages and job opportunities of U.S. workers. Specifically, DOL is responsible for determining whether U.S. workers are available to perform the work for which nonimmigrant foreign workers are being sought, and whether the employment of such aliens will adversely affect the wages and working conditions of similarly employed U.S. workers. Protecting the job opportunities and wages and working conditions of U.S. workers is of paramount importance when considering any aspects of the program. This objective must be balanced, however, with a concern for the ligitimate business interests of growers.

2. The AEWR is the primary wage standard designed to protect the jobs and earnings of U.S. workers. Piece rate requirements have always been defined in relation to the AEWR.

3. With the exception of the AEWR, which tends to be more than the prevailing wage, other wage and working condition requirements which are not specifically required as a minimum are related to show which are prevailing among U.S. workers similarly employed.

4. DOL has traditionally been concerned about situations where employers require increasing productivity in piece-rate-paid occupations in order to achieve a given hourly wage standard. Thus, the H–2 program regulations have contained language expressing that concern. This language was the basis for litigation brought by farmworker attorneys in 1982, which resulted in the interpretation upheld by the DC Circuit in 1985, cited above, requiring that piece rates be increased by the same proportion as the AEWR increases. The courts accepted the plaintiff's contention that the DOL rule meant that a productivity increase could not be required or result for any U.S. worker because of an AEWR increase. The courts rejected DOL's contention that the rule was meant to prevent

productivity increases required for the average U.S. worker.

5. In the H–2 program the interests of both workers and growers must be balanced. This principle has been clearly enunciated in federal court decisions.

6. Information on prevailing piece rates is collected by certain State Employment Security Agencies (SESAs) through surveys. Information is obtained by crop area and specific crop activity. The surveys, however, do not contain, for most States, sufficient information on aggregate earnings and hours worked to convert data to average hourly earnings.

7. Information on worker productivity is currently available only from payroll records of H–2 growers. These records have always been, by regulation, subject to on-site audit. These records permit calculations of whether the "average U.S. worker" earned the AEWR. The records, however, are usually not detailed enough to make this determination separately for activities paid at different piece rates with the same grower and present other problems when no U.S. workers are employed.

Proposed Rule—Options Considered and Course Chosen

Building on recommendations made by the DOL/USDA Task Force, DOL considered five major options and six sub-options for addressing the piece rate regulation issue. In the proposed rule published on June 5, 1986 (51 FR 20516) DOL presented a detailed analysis of the options considered, their relative merits and the reasons for its course of action. The option adopted in this rule, Option #3, is described below:

Option 3: Minimum piece rates would be no less than the prevailing piece rates in the area of intended employment, as determined by ETA–232 report findings. DOL will administratively review productivity requirements on job orders (firing threshold). Use 1977 as base year, on grower-by-grower basis; DOL will permit justifiable productivity requirement increases based on information submitted by individual growers.

DOL concluded that Option 3 was the best method for administering a piece rate policy in the H–2 program. This option represents the most balanced approach, taking into account the primary program responsibility to protect wages of U.S. workers, considerations of administrative feasibility and the legitimate concerns of agricultural employers that excessive piece rate earnings at levels maintained consistently above the AEWR will result in an economic disincentive to utilize domestic or certified foreign workers.

DOL recognized that this approach departs from long standing policy that piece rates be designed to yield the AEWR (20 CFR 655.202(b)(9)(ii)) and that some other options would not result in this change. See 51 FR 20516 (June 5, 1986). However, DOL believes there are too many practical weaknesses in the available tools for those other options. These weaknesses would present particularly serious problems when applying this approach to growers, crops and States coming into the program for the first time.

Under Option #3, growers would be required to offer and pay no less than the prevailing piece rate in the area of intended employment. This is currently a minimum Employment Service system-wide requirement for all agricultural employers who utilize the agricultural clearance system under the DOL regulation at 20 CFR 653.501(d)(4). The prevailing rate is determined by State Employment Service (ES) agencies and submitted in ETA–232 reports for review by ETA. Since the early 1950's, State ES agencies have been required to conduct annual prevailing wage surveys in areas where a sizeable number of migratory farmworkers are employed or requested through the agricultural clearance order system, or where one or more "H–2" foreign workers are employed. The survey is conducted during the peak of the crop activity and consists of employer and worker interviews. Collected data are crop and area specific (*e.g.*, apple picking in the Hudson Valley of New York). The surveys gather data on domestic worker wages only: H–2 workers are excluded. However, employers who hire both domestic and foreign workers at the same time are contacted for wage information on their domestic workers.

Along with requiring the payment of the prevailing piece rate as a minimum, DOL proposed to administratively review and determine the validity of productivity minimum requirements on job orders. Beginning in 1987, all H–2 growers who pay by the piece rate would be required to specify minimum productivity levels required of workers to insure job retention on their job orders if they have not done so before, and if such productivity requirements are conditions of employment. Such levels would be permitted to move upward from their 1977 levels (or first year after 1977 in the program) only if they are justified in writing to the Regional Administrator and are approved by ETA. Thereafter, any future productivity increases must be justified in a similar fashion for technological, economic or other reasons on a yearly basis. For employers entering the program for the first time, minimum productivity requirements could not exceed those which are normally required by other employers growing similar crops in the area of intended employment.

V. Discretion in Establishing a Piece Rate Adjustment Policy

Section 214(c) of the Immigration and Nationality Act gives the Attorney General (and his designee the Commissioner of INS) broad discretion in the admission of nonimmigrant aliens to the United States. 8 U.S.C. 1184(c); 8 CFR 2.1. With respect to determinations under the immigration laws on the availability of U.S. workers for jobs offered to nonimmigrant alien workers, and the adverse effect those aliens' employment may have on the wages and working conditions of similarly employed U.S. workers, the Secretary of Labor and DOL have been given broad discretion. See, *e.g.*, 8 CFR 214.2(b)(3)(i). This broad discretion, particularly with respect to methodologies for setting minimum wage rates under the immigration laws, has been recognized in the federal appellate and district courts. *Virginia Agricultural Growers' Association, Inc.* v. *Donovan*, 774 F. 2d 90 (4th Cir. 1985). *Florida Fruit & Vegetable Association, Inc.* v. *Brock*, 771 F. 2d 1455 (11th Cir. 1985), *cert. denied*, 106 S. Ct. 1524 (1986); *Shoreham Co-operative Apple Producers' Association, Inc.* v. *Donovan*, 764 F. 2d 135 (2d Cir. 1985); *Rowland* v. *Marshall*, 650 F. 2d 28 (4th Cir. 1981) *(per curiam)*; *Williams* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976), *cert. denied*, 429 U.S. 1000; *Florida Sugar Cane League* v. *Usery*, 531 F. 2d 299 (5th Cir. 1976); and *Limoneira Co.* v. *Wirtz*, 327 F. 2d 499 (9th Cir. 1964), *aff'g* 225 F. Supp. 961 (S.D. Cal. 1963); see also *Elton Orchards, Inc.* v. *Brennan*, 508 F. 2d 493 (1st Cir. 1974); and *Flecha* v. *Quiros*, 567 F. 2d 1154 (1st Cir. 1977). These decisions acknowledge DOL's discretion in the area of wages involving nonimmigrant alien agricultural workers and form the basis for construction of DOL's temporary alien labor certification regulations. See 20 CFR 655.0(e).

This is an area in which DOL has great "discretion to reach a number of different results rather than an area of pure statutory interpretation as to which there is in theory only a single answer." (See *Building & Construction Trades Department, AFL–CIO* v. *Donovan*, 712 F. 2d 611, 619 (D.C. Cir. 1983), *cert. denied*, 464 U.S. 1069 (1984)).

VI. Comments Received and DOL Responses

A total of 41 comments were received in response to the initial comment period. These included requests for additional time to submit more substantive observations. Another 27 comments were received in response to the second 30-day comment period. In all, 68 written comments were submitted by the public on the proposed rule: 44 from employers and their representatives; 21 from worker advocates, and 3 from State Employment Security agencies.

A. Employer Comments

The employers and employer representative commenters supported the adoption of the proposed rule. In their comments they made the following major points:

(1) The proposed rule protects the wages of U.S. workers by retaining the requirement that every piece rate paid worker will earn no less than the AEWR in any given pay period.

(2) Actual job opportunities for U.S. workers are protected by providing that workers may not be discharged for productivity below the prevailing or 1977 standards, regardless of whether the workers' production equals the current AEWR or not.

(3) The proposed rule emphasizes DOL's reliance on the AEWR as the main device for preventing adverse effect on wages in agriculture.

(4) Keying the acceptability of piece rates to standards that are prevailing in the area is consistent with DOL's practice in the administration of non-agricultural certification activities.

(5) This approach will be of benefit to both employers and workers because it will permit the utilization of the piece rate as an incentive wage in agriculture which historically results in higher earnings for workers.

(6) Permitting productivity requirement increases after approval by the RA recognizes the need for a flexible approach to account for technological improvements in farming operations.

DOL concurs with these observations.

B. State Agency Comments

One State agency which submitted comments fully supports DOL's proposed rule. Another agency recommended DOL choose Option #5 (no piece rate standard; permit justifiable productivity standard) primarily because of perceived confusion, complications and costs involved in determining prevailing piece rates and administering the AEWR at the same time. The third agency which commented recommended that DOL continue the requirement that the piece rate be designed to yield at least the AEWR.

As noted in the proposed rule, one of the factors examined in DOL's consideration of Option #5 was the fact that this approach would be in contradiction to the prevailing wage standard principle generally applied throughout in the labor certification program. Such an approach would effectively ignore the fact that most current H–2 employers pay on a piece rate basis, and would not permit examination of the acceptability of most wage offers in terms of standards applicable to domestic workers in the area of intended employment. DOL recognizes that Option #5 could probably be the easiest approach to administer, but does not believe that it would provide adequate protection for U.S. workers. This suggestion, therefore, was not accepted.

The State agency which recommended Option #5 also suggested that DOL hire the necessary personnel to effectively administer the AEWR, including an expansion of the sample size. As noted in the recently concluded rulemaking adopting the USDA quarterly wage survey data as the base for computing and publishing AEWRs (51 FR 24138), the information DOL uses to derive AEWRs is actually collected by the U.S. Department of Agriculture (USDA) and DOL merely indexes the USDA data on a yearly basis to determine AEWRs. DOL, therefore, does not believe this comment is relevant to the piece rate rulemaking.

DOL has not accepted the recommendation provided by the third State agency that the requirement of the piece rate being designed to yield the AEWR be retained. The practical weaknesses in the available tools for effectively administering this include: (1) The resource problems inherent in the examination of grower payroll records; (2) the problems that arise when new States and crops where no adequate payrolls records exist enter the program; and (3) the unsurmountable problem of being unable to factor into the process considerations affecting past years actual earnings which are beyond the control of the employer, such as weather, crop yield and physical capability of workers. Further, reasons for not accepting this recommendation (which also was presented by worker representatives) are discussed in the following section.

C. Worker Representative Comments

Worker representatives who commented on the proposed rule were not in favor of its adoption as final. Their arguments against the rule, however, were not sufficient to persuade DOL that another course of action would be more appropriate. The primary observations presented by these commenters and DOL's response to them are presented below. While all of the comments submitted by worker representatives have been carefully considered by DOL, many of the comments were duplicative. Therefore, this section does not address each commenter separately. However, this section has been structured in a manner which responds to each significant issue raised by the comments. The comments which were totally irrelevant or outside the scope of the rulemaking are not discussed.

1. Continuation of Proportional *Increase Approach*

Comment: DOL was criticized for not explaining why the current proportionate increase approach mandated by the Courts is not acceptable. In support of this general criticism, several commenters disputed DOL's observation that the proportionate increase approach would require excessive piece rate earnings at levels above the AEWR, noting that average worker earnings are almost at levels at or above the AEWR anyway.

DOL Response: DOL is aware that average piece rate earnings are generally at or above the AEWR. However, DOL cannot reasonably be expected to require growers to continually increase their piece rates in a straight formula manner which would have the effect of turning the AEWR into an earnings escalator rather than the minimum floor it is designed to be.

The situation in Montana is illustrative of how the formula application of the proportionate increase approach would result in unreasonable escalation of piece rates from one year to the next. In 1985, several employers in Montana applied for labor certification for irrigators. This was their first year in the H–2 program. In the absence of a published AEWR for Montana, the growers were required to offer a minimum guarantee of $3.35 per hour (the prevailing rate) to their piece rate paid workers. Actual average worker earnings in 1985 for piece rate paid workers exceeded $5.00 per hour. The computed but unpublished AEWR for Montana in 1986 is $4.87 per hour. Thus, if Montana growers had continued to pay by the piece rate in 1986 and if the AEWR had been published, the piece rate would have had to reflect an

increase of 45% in 1986 over what it had been in 1985, despite the fact that the average earnings in the previous year were in excess of the current year's unpublished AEWR.

The reasoning for DOL's rejection of the proportionate increase approach was articulated in the rulemaking of September 2, 1983, when DOL attempted to revise the piece-rate regulation "the purpose of the AEWR and the piece rate is to protect U.S. workers' wages from the adverse effect of temporary employment of nonimmigrant aliens. This protection is effected by establishing an adverse effect floor. Employers are free to pay more and workers are free to seek more wages, but the labor certification program is not the appropriate means to escalate agricultural earnings above the adverse effect level or to set an 'attractive wage'." 48 FR 40168, 40173 (September 2, 1983).

As a final point, DOL cannot agree with some commenters' observations that continuation of the proportionate increase approach (with an allowance for justifiable productivity increases) would allow for continuation of the piece rate as a management tool. DOL noted in the proposed rule that continuation of this approach would probably result in growers abandoning piece rates in favor of hourly rates plus bonuses. This is exactly what happened in 1986 with many East Coast apple growers.

2. Abandonment of Long Standing Policy on Piece Rates Yielding AEWR

Comments: DOL was criticized for removing the regulation that piece rates be designed to yield the AEWR (at a minimum), and there be no productivity increase required of a worker in order to attain the AEWR, and for not sufficiently justifying its departure from past practice at this time.

DOL Response: The impetus for this rulemaking, which modifies past practice, was provided by the U.S. Court of Appeals for the District of Columbia. Its 1985 decision invalidated the piece rate rulemaking revisions promulgated in 1983 and 1985 which represented DOL's interpretation of its previous regulation. In doing so, the Court clearly presented DOL with the opportunity to examine the piece rate issue *de novo*.

In its *de novo* examination, DOL determined that the existing regulation was vague, imprecise and unclear, both conceptually and operationally. For example, the regulation did not specify (or indicate) whether the piece rate should be designed to yield the AEWR for every worker, for the average worker, or for U.S. workers only. It did not give any indication as to what should be measured to arrive at a determination of compliance with the requirement. It did not state whether the standard should be applied on a grower-by-grower basis, for a crop or an area within a State or on a Statewide or regional basis. DOL has interpreted these provisions several times in the past, in administrative issuances to field staff and in regulations published in 1983 and 1985, but DOL's own interpretations have been extensively litigated and eventually invalidated by the Courts. This demonstrates the ambiguous, unclear nature of the provisions themselves. Therefore, DOL is now clarifying and simplifying the rule so it may be administered in a straightforward manner. The rule retains the essential piece rate tie to the AEWR in that make-up pay is required should piece-rate earnings fall below the AEWR. It properly observes the productivity increase by administratively monitoring the firing threshold. While DOL is clarifying somewhat ambiguous language in the regulations, DOL is not abandoning its concerns that appropriate wage rate standards be maintained, and that unwarranted productivity requirement increases be avoided.

3. Problems with Proposed Rule

a. *Appropriateness of Prevailing Piece Rates.*

Comment: Commenters presented their observations that prevailing piece rates are not appropriate, since they have already been depressed by the presence of alien workers. Supposedly, they will perpetuate depressed wage rates (both piece rates and hourly rates). The commenters submitted results of certain State agency wage surveys in support of this contention.

DOL Response: The data presented by commenters were examined closely by DOL and compared with similar data from State agency wage surveys in other States. While the data that was submitted do indicate that for certain crops in certain areas where H–2 workers have been certified there has been an appreciable increase in piece rates over a period of time, other data are available to show that this is not common to all areas utilizing H–2 workers. For example, piece rates in Vermont and Massachusetts increased 30% and 33% respectively between 1980 and 1986, whereas the AEWRs for those States increased only 25% and 26%. Even such heavy H–2 user States as Virginia and Maryland have shown piece rate increments of 25% over the same time span.

DOL does not dispute the commenters' contention that the presence of aliens may have had a static effect on piece rates in certain areas and in certain crops. However, under the INA, it is clear that the use of foreign workers to a certain degree is intended so long as certain minimum protections are provided to U.S. Workers, and the AEWR is the primary device for providing the protection from adverse effect. The provision in the regulations that make-up pay to the AEWR be provided is maintained to reflect DOL's continuation of past policy relying on the AEWR as the minimum protective floor.

Further, DOL does not agree with some commenters' observations that reliance on prevailing piece rates does not provide adequate minimum protection to some workers (such as apple pickers) whose actual hourly earnings when paid on a piece rate basis usually exceed the AEWR. DOL's responsibility in administering the H–2 program does not extend to guaranteeing or protecting the earnings of workers at levels above those that are designed to prevent adverse effect nor does it involve requiring that rates be set so high as to be very attractive to U.S. Workers.

b. *Adequacy of Prevailing Wage Surveys.*

Comment: Commenters criticized prevailing wage surveys conducted by State agencies as not adequate for purposes of this rule. Specific mention was made of DOL's acknowledgment in the proposed rule that many East Coast apple growers did not pay piece rates as required by certain Court Orders during the 1985 season; inclusion of the wages actually paid by these employers in prevailing wage survey findings would skew the findings and reward the growers for non-compliance with lawful requirements.

DOL Response: DOL does not agree with the criticism of State agency wage surveys. Experience has shown that these surveys have been adequate in the past for purposes of administering regulatory requirements at 20 CFR Parts 653 and 655. There is no reason to think they would be inadequate now. For States where surveys may not have been utilized in recent years, DOL plans to assure that State agencies comply with established procedures by means of on-going review and the provision of technical assistance and training.

The comment related to 1985 apple harvest piece rates, while only peripherally relevant to this rulemaking, was rendered moot by grower and court action prior to the 1986 harvest season.

As the result of DOL's requirement (in compliance with court orders) that the proportional increase interpretation of the piece-rate regulation be applied for apple picking in 1986, most growers opted to pay their workers on an hourly basis for the 1986 season. DOL's decision to permit this change in method of payment is being litigated in U.S. District Courts in Virginia and New York. DOL's refusal to permit certain Virginia apple growers to offer unspecified bonuses in addition to hourly rates also is being litigated. Further, there is no way of knowing what prevailing piece rates would have been in 1985 if the rates required by the proportional increase method had been paid. Wage surveys include both criteria (H–2 user) and non-criteria (non-H–2 user) growers, and while DOL attempted to enforce the proportional increase approach in 1985, the courts permitted non-payment and the establishment of escrows. Even if this issue had not been academic, there is no practical way to go back and reconstruct prevailing wage surveys to include wages which were not actually paid.

c. *Productivity Requirements.*

Comment: Some commenters stated that the proposed rule does not adequately protect workers against unjustified productivity increases. They found problems with the establishment of the 1977 base standard, and observed that the content of the USDA prepared appendix which discusses factors affecting worker productivity leaves the door open to abuses in program administration. Further, it was contended that DOL and SESA staff lack sufficient expertise to make judgments regarding legitimate or justifiable productivity changes.

DOL Response: The rule will effectively accomplish what has been difficult to administer and accomplish in previous piece rate rulemaking efforts. It will have the effect, for the first time, of directly regulating productivity standard requirements. The rule strengthens control of this employment factor by explicitly requiring employers to include productivity standards on their job orders if they are to be used as a basis for refusing to hire a worker or for terminating employment.

DOL finds no merit in the contention that certain factors affecting productivity discussed in the appendix to the proposed rule might be used to justify the approval of productivity increases which are not legal and job related, such as age or gender. The USDA concept paper was published for information purposes only, and was not intended to convey the impression that DOL found all the reasons discussed acceptable for the purposes of labor certification. Justifiable productivity requirement increases may be permitted by individual RAs based on documentary evidence submitted by employers showing that such increases are, in fact, warranted because of technological, horticultural, climatological, or economic changes. Such increases may be granted on a grower-by-grower or areawide basis.

DOL believes that Federal and State staff have sufficient familiarity, background and expertise in this area to make educated judgments when they are called for. Other agencies, such as State Departments of Agriculture and the Cooperative Extension Service, will be consulted in the process when needed. DOL intends to monitor the implementation of this revised procedure, and will make changes if they are warranted at a future time.

Last, the establishment of 1977 as a base year (or first year after 1977 that employer entered the program) is basically a starting point to which adjustments can be made based on justifiable reasons supported by evidence. This is the base year standard set in the order issued by the U.S. District Court for the District of Columbia in 1983 in *NAACP, Jefferson County Branch* v. *Donovan* which was not objected to by the certified nationwide class of farmworkers. See Civ. No. 82–2315, final order and judgment (D.D.C. August 21, 1985).

4. Alternatives Suggested

a. *Piece Rates Designed for Earnings Above AEWR.*

Comment: Some commenters suggested that DOL consider requiring growers to offer piece rates designed to yield worker earnings equal to some fixed percentage above the AEWR; *e.g.*, the AEWR plus 25%.

DOL Response: Adoption of this suggestion would result in DOL requiring that average worker earnings levels above the adverse effect floor be maintained. This is a result which DOL has previously rejected in considering continuation of the proportionate increase methodology (See DOL Response Under C, 1 (above)) and the requirement that piece rates be designed to yield the AEWR as a minimum (See DOL Response Under C, 2 (above)) for the same conceptual and administrative problems this suggestion poses. Further, this suggestion would create the equivalent of adverse effect piece rates, which are precluded without appropriate notice and rulemaking.

b. *Proportionate Increases with Productivity Flexibility.*

Comment: Some commenters suggested DOL consider continuation of the proportionate increase approach to piece rates, but address the productivity requirement issue by allowing some sort of relaxation of base standard requirements because of extenuating circumstances which can be justified by employers.

DOL Response: While recognizing that the element concerning productivity in this suggestion closely resembles the approach DOL will be taking to allow for flexibility, the same objections to the continuation of the proportionate increase approach discussed in DOL Response to C, 1 (above) apply. The example cited in that section illustrates what unreasonable distortions could result from application of this rigid methodology.

Regulatory Impact

The rule affects only those employers using non-immigrant alien workers ("H–2 visaholders") in temporary agricultural jobs paid by piece rate in fourteen States. It does not have the financial or other impact to make it a major rule, and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127; 5 U.S.C. 601 note.

At the time the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the rule would not have a significant economic impact on a substantial number of entities. The small number of employers who employ nonimmigrant aliens in piece-rate-paid agricultural employment in the United States must pay the prevailing piece rate to their workers and this rule would not in that way, or otherwise, have a significant economic impact on small entities.

Final Rule

Accordingly, Part 655 of Chapter V of Title 20, Code of Federal Regulations is amended as follows:

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for Part 655 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c); 29 U.S.C. 49 et seq; 8 CFR 214.2(h)(3)(i).

§ 655.202 [Amended]

2. Section 655.202 is amended by revising paragraph (b)(9)(ii) to read as follows:

§ Contents of job offers.

* * * * *

(b) * * *

(9) * * *

(ii)(A) If the worker will be paid on a piece rate basis, and the piece rate does not result at the end of the pay period in average hourly earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the adverse effect rate, the worker's pay will be supplemented at that time so that the worker's earnings are at least as much as the worker would have earned during the pay period if the worker had been paid at the adverse effect rate.

(B) If the employer who pays on a piece rate basis requires one or more minimum productivity standards of workers as a condition of job retention, (1) such standards shall be no more than those applied by the employer in 1977, unless the RA approves a higher minimum; or (2) if the employer first applied for temporary labor certification after 1977, such standards shall be no more than those normally required (at the time of that first application) by other employers for the activity in the area of intended employment, unless the RA approves a higher minimum.

* * * * *

§ 655.207 [Amended]

3. Section 655.207 is amended by removing paragraphs (c) and (d) and by redesignating paragraph (e) as new paragraph (c).

Signed at Washington, DC, this 2nd day of April, 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87-7704 Filed 4-8-87; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 511

[Docket No. R-87-1260; FR-2055]

Rental Rehabilitation Program; Performance Adjustments to Formula Allocations

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule; suspension of 24 CFR 511.32.

SUMMARY: This rule suspends 24 CFR 511.32, which contains the procedures and criteria for performance adjustments to formula allocations under the Rental Rehabilitation Program. This action is being taken because numerous anomalies would have resulted from the Department's initial application of the performance adjustment regulation, at current project completion levels. At this time, the Department believes it is in the best interests of the Rental Rehabilitation Program not to implement the discretionary statutory authority to provide performance adjustments and is, therefore, suspending § 511.32, Performance adjustments to formula allocations, pending further study and possible revision or removal.

EFFECTIVE DATE: May 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rental Rehabilitation Division, Office of Urban Rehabilitation, Department of Housing and Urban Development, at the above address, telephone (202) 755-5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 17 of the United States Housing Act of 1937 (the Act) establishes a Rental Rehabilitation Program, which provides grants to States, urban counties, and units of general local government to help support the rehabilitation of privately owned real property to be used for primarily residential rental purposes. The program is designed to increase the supply of standard housing units affordable to lower income families. This is achieved by (1) supplying Rental Rehabilitation funds to assist in the rehabilitation of existing units and (2) providing rental housing assistance under Section 8 of the Act to lower income families to help them afford the rent of units in projects assisted with Rental Rehabilitation program funds, or find alternative housing. Rental rehabilitation grant allocations are calculated according to a formula prescribed by the Secretary based upon statutory criteria, except where HUD makes grants directly to units of general local government in States that have elected to have HUD administer their allocations. Grants in the amount of the formula allocation are made after grantees have submitted satisfactory program descriptions to HUD.

Under section 17(b)(2)(B) of the Act, the Secretary has the discretion to adjust the formula allocation for cities, urban counties, consortia, and States administering a rental rehabilitation program by as much as 15 percent above or below the regular allocation, based upon an annual review of the grantees' past performance. Grants would then be made based upon the adjusted allocations, after the submission of satisfactory program descriptions by grantees. Section 17(b)(2)(B) requires the Secretary to establish performance criteria by regulation if the Secretary exercises his or her authority to make performance adjustments.

The interim rule (47 FR 16936, April 20, 1984), which implemented the Rental Rehabilitation Program by adding 24 CFR Part 511, contained § 511.32, Performance adjustments to formula allocation. The preamble (at page 16942), however, advised the public that the Department intended to publish a more detailed performance adjustment system by interim rule. This interim rule was published on December 10, 1985 (50 FR 50594).

The Department received four public comments in response to the December 10, 1985 interim rule, one from a State grantee and the other three from cities. Two of the cities were concerned that grantees that received waivers of the requirement in § 511.10(k), that at least 70% of the rental rehabilitation grant amount be used to rehabilitate units containing two or more bedrooms, would do poorly under the performance standard in § 511.32(f)(2). This performance standard provides up to 15 points based on the extent to which a grantee rehabilitates units containing two or more bedrooms and three or more bedrooms. It was also noted that § 511.10(k) refers to an equitable share of "grant amounts" while the performance standard measures "units." This commenter suggested that the performance standard also be based on "grant amounts."

The performance standard in § 511.32(f)(3) concerns the extent to which units were occupied by very low-income families before rehabilitation and the extent to which these families were not displaced by the rehabilitation. One commenter claimed that this standard penalized grantees that rehabilitated vacant units and recommended that the standard be subdivided; a portion of the points would be awarded under the current standard and the remainder would take into consideration percentages based on previously occupied units rather than all units.

A commenter voiced concern that the allocation of up to 30 points for financial

standards (§ 511.32(f) (4) and (5)) indicated what it considered to be a distressing change in emphasis—from encouraging production of rehabilitated units in a cost-effective manner to simply encouraging maximum leverage by the private sector.

A commenter objected to the use of thresholds, in general (§ 511.32(e)), and, in particular, to the threshold performance standard in § 511.32(e)(2), which requires that at least 80% of the grantee's rehabilitated units must have rents that are affordable to lower income families. The commenter argued that the grantee has no control over the rents currently being charged in units that were rehabilitated six years ago, for example. Another commenter suggested that affordability under § 511.32(e)(2) not be based on current Fair Market Rents, which it noted have not been increased in its State. It recommended that an annual adjustment factor methodology similar to that used to adjust contract rents in the Section 8 Program be incorporated into this threshold performance standard.

Finally, the comment from the State grantee included a recommendation that the performance of State grantees be measured against other States within a region, rather than on a nationwide basis.

Because the Department is suspending § 511.32 for the reasons stated below, it is deferring responding to these comments, but will take them into consideration in its further review of the performance adjustment system.

The Department's computer runs, made as part of the initial implementation of the performance adjustment system contained in the December 10, 1985, interim rule, produced anomalous and unintended results.

Generally, grantees with very few completed projects, but with projects that fully met most of the specific adjustment criteria (such as projects containing exclusively two or three bedroom units), were strongly favored by the system and received the maximum positive adjustment (an additional 15% grant allocation).

Grantees, however, with far more completions—even if they did generally well on most of the criteria—were not perfect on any of the criteria (which is a statistical likelihood), and tended to cluster toward the middle of the rankings. The Department did not intend that the performance adjustment system place such a high emphasis on having a few *fully* successful projects, at the expense of grantees that produced a far greater number of *generally* successful projects. The Department notes that, for the same reasons, the adjustments also tend to provide more funds to grantees that have spent less of their existing allocations—another undesirable result. (At the same time, however, the Department does not want a performance adjustment system that simply favors the larger grantees.) Because the current performance adjustment system clearly produces indefensible performance adjustments and needs further study, the Department is suspending § 511.32, Performance adjustments to formula allocations, pending further consideration of revising or completely withdrawing the performance adjustment system. Because most of the criteria contained in § 511.32 will probably be contained in any future system (if an equitable system can be devised at all), and because the current regulation, therefore, still provides some notice of the elements of grantee performance that the Department views as important, the Department is suspending § 511.32, rather than removing it, at this time.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements 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 regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981 (Executive Order 12291). This rule does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, nor does it significantly 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. Analysis of the rule indicates that it would not have an annual effect on the economy of $100 million or more.

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have significant economic impact on a substantial number of small entities, because statutorily eligible grantees and State recipients are relatively larger cities, urban counties or States and the rental rehabilitation grant amounts to be made available to any grantee are relatively small in relation to other sources of Federal funding for State and local government in relation to private investment in rental housing.

This rule was listed as Sequence Number 924 in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424) under Executive Order 12291 and the Regulatory Flexibility Act. It is also related to Sequence Number 920 in the Semiannual Agenda (51 FR 38459), which concerns final rulemaking for 24 CFR Part 511 as a whole.

The Catalog of Federal Domestic Assistance program number applicable to this rule is 14.230.

List of Subjects in 24 CFR Part 511

Rental rehabilitation grants, Administrative practice and procedure, Grant programs: Housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Part 511 as follows:

PART 511—RENTAL REHABILITATION GRANT PROGRAM

1. The authority citation for 24 CFR Part 511 continues to read as follows:

Authority: Section 17 of the United States Housing Act of 1937, 42 U.S.C. 1437o; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

§ 511.32 Performance adjustments to formula allocation. [Suspended]

2. Section 511.32 is suspended.

Dated: April 2, 1987.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 87-7874 Filed 4-8-87; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 120

Reimbursement of the Ute Tribe of the Uintah and Ouray Reservation, UT

February 16, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; removal.

SUMMARY: The Bureau of Indian Affairs is publishing a rule that removes 25 CFR Part 120, Reimbursement of the Ute

Tribe of Uintah and Ouray Reservation, Utah. It has been determined that there is no further need for or applicability of the rule.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Mitchell Parks, (202) 343–3649.

SUPPLEMENTARY INFORMATION: The authority to remove this rule and regulation is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9. This rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

This regulation, found in 25 CFR Part 120, Reimbursement of the Ute Tribe of the Uintah and Ouray Reservation, Utah, is being removed because it has been determined that there is no further need for the rule. The rule governed the one-time payment to those persons whose names appeared on the final roll of mixed blood-Indians that was prepared pursuant to Section 8 of the Act of August 27, 1954 (68 Stat. 868) or to their heirs or legatees. Claims for reimbursement were required to be filed not later than September 18, 1973. Final payments were made and no claims or appeals have been filed with the Bureau of Indian Affairs since that date. Therefore, there is no further need for or applicability of this rule.

Notice of proposed removal was published in 51 FR 35532 on October 6, 1986 and no comments were received.

The Department of the Interior has determined that this rule is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not constitute a major federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

The Office of Management and Budget has informed the Bureau of Indian Affairs that the information collections contained in this regulation need not be reviewed by them under the Paperwork Reduction Act.

List of Subjects in 25 CFR Part 120

Indians-claims, Indians-judgment funds.

PART 120—[REMOVED]

Accordingly, Part 120 Chapter I of Title 25 of the Code of Federal Regulations is hereby removed and reserved.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-7843 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[CGD 86-020]

Great Lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Great Lakes Pilotage regulations by increasing basic pilotage rates by thirteen percent in District 1 and six percent in District 3. No change is made in the basic rates in District 2. The revision in rates is needed to correct disparities in the manner various expenses have been recognized in the past. These changes are intended to provide parity in pilot compensation among the three Districts.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Office of Marine Safety, Security and Environmental Protection, (G-MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 267-0217.

SUPPLEMENTARY INFORMATION: On May 22, 1986, the Coast Guard published a Notice of Proposed Rulemaking (51 FR 18806) with the comment period scheduled to end June 23, 1986. On June 2, 1986, the Coast Guard published a Notice of Public Hearing and Extension of Comment Period (54 FR 19759) and extended the comment period to July 2, 1986. The public hearing was held in Cleveland, Ohio on June 18, 1986. Eighteen written comments were received.

Drafting Information

The principal persons involved in drafting this rule are: Mr. John J. Hartke, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Commander Ronald C. Zabel, Project Attorney, Office of the Chief Counsel.

Discussion of Comments

A port, two port associations, two shipping associations, and a commission requested that the Coast Guard "hold the line" and not increase Great Lakes pilotage rates. The comments stated that others involved in the Great Lakes industry were not increasing costs to shippers to assist the ailing Great Lakes shipping industry. They suggested further evaluation of the effect of the rates increases on Seaway traffic. These comments asserted that pilotage is a significant cost factor, that increasing pilotage rates would result in decreased vessel traffic coming into the Great Lakes system, and that cargo diversions to coastal ports would result. A related comment from one of the port associations stated that the cost of pilotage is nearer 7½% of the total revenue for a typical round-trip voyage from Northern Europe to the Western Great Lakes, rather than the 2% to 5% of total ship operating costs as cited in the notice of proposed rulemaking. It should be noted that the commenter refers to a percent of total vessel revenue, whereas the Coast Guard used a percentage of total ship operating costs. We have asked the commenter for a copy of the report from which his data was taken, but as of this date, no additional information has been received regarding the comment.

The Coast Guard does not agree with the above comment. We believe the proposed pilotage rate increases will not have a significant impact on Great Lakes shipping.

First, the requirement to use a registered pilot is applicable only to vessels in the foreign trade. The vast majority of shipping and port activity on the Great Lakes is not related to foreign trade vessels. Overseas trade comprises a very small proportion of total shipping on the Great Lakes. A U.S. General Accounting Office report entitled *Great Lakes Shipping* (May 1986), indicates that during 1984, total overseas trade comprised only 8% (6% U.S., 2% Canada) of the total Great Lakes/St. Lawrence Seaway Traffic. The report is available from the U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, Maryland, 20877.

Second, in the Notice of proposed Rulemaking of May 22, 1986 (51 FR 18806), the Coast Guard stated that pilotage fees represented between 2% to 5% of total ship operating costs.

A study conducted by Booz, Allen & Hamilton (April 15, 1985), entitled *Transportation Cost Analysis of the St. Lawrence Seaway*, corroborates our statement. Using the data contained in the "least cost routing analysis" section, it can be calculated that the cost of pilotage is in the 1.7% to 2.6% range of total water transportation costs. A copy of the report may be obtained from the

Saint Lawrence Seaway Development Corporation, Washington, DC 20590.

The U.S. Pilotage cost for a typical ocean going vessel making a voyage into the system to Chicago to discharge steel, proceeding to Duluth to load grain, then leaving the system, would be approximately $18,646 for the round trip, which is a total of more than 3,000 miles of pilotage. The ton-mile cost is $.000231. It should be noted that pilotage costs per ton are somewhat higher for the Great Lakes than at Tidewater ports ($.52 per ton as compared to $.03) for a typical commodity such as grain, because of the many pilotage miles involved. These are the only pilotage charges for which we have authority and responsibility. This cost figure ($18,646) includes only U.S. Great Lakes pilotage charges and includes neither the all Canadian area pilotage fees nor European or other destination pilotage fees. This rate increase will add about $1,158 to the total U.S. pilotage cost of this round trip transit into and out of the system.

Seven comments stated that the rates should not be increased because the pilots themselves were willing to accept no increase this year. These comments were related to press releases by the pilot organizations for Districts 2 and 3, that contained recommendations the rates not be increased. The releases were published just prior to the publication of the notice of proposed rulemaking. The Coast Guard believes that the need for a rate increase exists. Over the years of across-the-board increases, disparities have resulted among the three Districts. Two of the comments supported rate increases to correct the disparities. The variable increases are intended to eliminate the disparity. Three comments stated that the pilot organizations should either become more efficient or accept lower compensation as the rest of the entities involved in Great Lakes shipping have had to do. This comment was countered by the District 2 pilot organization, which asserted that they were in fact being penalized for being efficient by not being granted a rate increase. The Coast Guard recognizes the importance of greater efficiency. The increases do not represent what the pilot organizations asked for, and rates established in this rule are substantially below what each pilot organization indicated it required for adequate compensation. Earlier in our rate review, pilot organizations in Districts 1, 2, and 3 had requested increases of 64%, 8.5% and 7.31% respectively.

Two comments stated that the pilot workload standards used to determine the number of pilots for which target compensation is to be included in the rate formula are excessive. One of these comments also stated that the Coast Guard has never limited any of the pilot organizations to numbers developed solely through the application of the workload standards.

The pilot workload standards of 1,000 bridge hours per pilot per season in designated waters (rivers) and 2,000 bridge hours per pilot per season in undesignated waters (lakes) resulted from a Department of Transportation Great Lakes Pilotage study completed in 1972. These workload standards were based on the hours actually being worked at that time. They have been used since 1972 as guidelines in determining the number of pilots for rate setting purposes. As part of the development of the Notice of Proposed Rulemaking (51 FR 18806), the Coast Guard reviewed the current applicability of those workload standards. This review included discussions with the three pilot organizations and accompanying pilots on pilotage assignments in each District. The pilots in 2 of the 3 Districts are operating at a level close to the workload standards. The pilots in the other District are operating at a level less than the standards. In establishing this rate increase we have used only the number of pilots resulting from the application of the workload standards. The reason for strict adherence to a pilot workload standard is to ensure that the rate increase is fully justified and that users of pilotage services do not have to pay for excess pilots. Reduction in the number of hours in the workload standard would increase the number of pilots required and, unless target compensation was reduced on a comparable basis, would necessitate greater rate increases. Of course, nothing in this rulemaking limits the number of pilots in a given District. It is up to the pilot organization to determine whether they wish to distribute available revenue over a greater number of persons.

One of these comments also stated that a particular trip averaging 11 hours requires that pilots violate the provisions of federal law, 46 U.S.C. 8104(d), that sets eight hours as the maximum length of time that a licensed individual in the deck department may be required to work in one day. A registered pilot is not a member the deck department of a vessel and is not subject to the eight hour limitation mentioned in the last sentence of 46 U.S.C. 8104(d). The definition of "United States Registered Pilot" at 46 CFR 401.110(a)(8) includes only those persons "other than a member of the regular complement of a vessel." One must be a part of the regular complement of a vessel to be a member of the deck department. The Coast Guard has consistently considered 46 U.S.C. 8104(d) as excluding registered pilots since the Great Lakes pilotage regulations were first promulgated in 1961. Because registered pilots are not subject to limitations in 46 U.S.C. 8104(d), the Coast Guard has, by regulation, provided for adequate rest periods. *See* 46 CFR 401.451.

Because application of the pilot workload standards in our rate proceedings is of significance to both the pilot organizations and the users of the system, we will continue to review the reasonableness of these standards.

A comment questioned the justification of compensating pilots at levels equal to Lake vessel masters and chief mates. A conclusion resulting from the 1972 Department of Transportation Great Lakes Pilotage Review was that target compensation for U.S. pilots used in determination of appropriate pilotage fees should be comparable to the earnings of their licensed counterparts on U.S. Great Lakes vessels. This is included in the Statement of Policy for Pilotage in the Great Lakes System, U.S. Department of Transportation, June 16, 1973. The commenter has not offered any alternatives to our compensation policy. The Coast Guard is not convinced that this longstanding policy should be changed without a compelling justification.

One comment stated that our guideline on pilot compensation contains erroneous assumptions which result in a rate which reflects lower pilo gross revenue than is proper. The comment stated that all undesignated waters should not be treated the same, that trans-lake pilotage is different from harbor pilotage, and that harbor pilotage services should be compared to that of a master for compensation purposes. Differences in compensation are based on whether the pilotage services are provided in designated waters or in undesignated waters. An additional guideline used is that pilots providing services in designated waters (46 CFR 401.405) should earn compensation equivalent to that of a master on a U.S. Great Lakes vessel, and pilots providing services in undesignated waters (46 CFR 401.410) should earn compensation equivalent to that of a first mate on a U.S. Great Lakes vessel. In the past the Coast Guard has not distinguished between types of pilotage services within undesignated waters. However, we will include as part of our continuing

review of pilot workload standards the matter of differentiating between trans-lake pilotage and harbor pilotage in undesignated waters for target pilot compensation purposes. This will require additional evaluation which cannot be completed prior to this rule being published.

At the public hearing held on June 18, 1986, regarding Great Lakes Pilotage rates, Lakes Pilots Association, Inc., (District 2) stated, among other things, that they were not treated fairly; that they have been penalized for being efficient. They stated that their press release was their way of protesting the untimeliness of the pilotage rate proposal and was also an attempt to secure more business. They said that they are complaining about the way the pilots in District 2 have been treated, and that they deserve to be fairly compensated.

The Coast Guard treats pilots in District 2 the same as all registered pilots. The Coast Guard has evaluated the financial data and has adhered to the rate setting methodology, applying it consistently in all 3 pilotage Districts.

At the public hearing on June 18, 1986, Upper Great Lakes Pilots, Inc., (District 3) stated, among other things, that there is no question that the 6% rate increase for District 3 can be easily justified, and that they are not going to turn down the rate increase proposed by the Coast Guard.

Lakes Pilots Association, Inc., requested a new rate provision which would provide that when a ship goes beyond the first bridge in any port, an additional charge of $400 be charged to the ship to compensate the pilot for the more difficult job of navigating the narrow winding river. This provision has not been included in the final rule because Great Lakes registered pilots are not compensated based on the difficulty of a particular assignment. The Coast Guard makes a distinction in target pilot compensation only with regard to designated waters versus undesignated waters, and not with respect to the relative difficulty of various individual assignments within particular designations. Additionally, as a rate increase cannot be justified for District 2, it is not appropriate to initiate a new charge. However, the requested new rate provision will be considered at future rate setting proceedings.

Upper Great Lakes Pilots, Inc., requested a new rate provision which would provide that if a ship goes to anchor or moves from one anchorage to another in undesignated waters, the ship should be charged a movage charge to cover the additional cost the pilot incurs when he boards or gets off a ship at anchor. This provision has not been included in the final rule because the Coast Guard is not aware of any additional costs that are not already included in the expense base for District 3, and because the ship is already being charged under the trans-lake 6 hour period rate (46 CFR 401.410). If, because of the anchoring procedure, a new 6 hour period is entered, the ship may be charged for an additional 6 hour period.

The United States and Canada have agreed to increase Great Lakes pilotage rates in the international sectors of the system by 13% in District 1, 0% in District 2, and 6% in District 3. Despite the fact that the 1986 shipping season is over, the Coast Guard believes this rate adjustment is necessary to eliminate the existing disparity and to provide a basis for any future adjustments negotiated with Canada.

Evaluation: This final rule is considered to be non-major under executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). A regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, between 7:30 a.m. and 3:30 p.m., Monday through Friday. Copies may also be obtained by contacting John J. Hartke, Room 1210, same address, telephone number (202 267–0217.

If the rate increase proposed in this rule were in effect for the entire 1986 season, the estimated cost would be $384,360, which would result in an overall system rate increase of 5.8%. This cost figure is the amount of additional revenue the U.S. pilots should receive under this regulation based on the projected 1986 traffic and is the increased amount that shippers would have to pay for pilotage services on the Great Lakes.

It has been estimated, and widely accepted, that pilotage fees represent somewhere between 2% to 5% of total ship operating costs. The estimated 5.8% overall rate increase multiplied by the 5% portion of total ship operating costs (assuming the highest end of the scale) equals less than a three tenths of a percent increase in total ship operating costs, which will not have a significant impact on the shipping industry. The benefit of this rule is the value of avoiding or minimizing costly delays and disruptions in shipping attributable to the failure to retain qualified pilots and to attract new qualified pilots. Almost all of the vessels transiting the system which are required to use registered pilots are foreign flag vessels. Similar size U.S. vessels have daily ship operating expenses in the range of $10,000 to $15,000. Although the daily ship operating expenses for comparable foreign vessels are typically lower, it is clear that delays in transiting the system can result in substantial additional costs to the vessel. The overall efficiency and safety of the pilotage system is enhanced by having an appropriate number of pilots available to provide the required services.

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164) requires a regulatory flexibility analysis for regulations having a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Act, it is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

In the development of this rate adjustment, U.S. and Canadian shipping associations and pilots organizations were consulted.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water) Reporting and recordkeeping requirements, Seamen.

PART 401—[AMENDED]

In consideration of the foregoing, Part 401 of Title 46 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 401 continues to read as follows:

Authority: 46 U.S.C. 8105, 9303, 9304; 49 CFR 1.46a

2. Section 401.405 is revised to read as follows:

§ 401.405 Basic rates and charges on designated waters.

Except as provided under § 401.420, the following basic rates shall be payable for all services and assignments performed by U.S. Registered Pilots in the areas described in § 401.300.

(a) *District 1.*

(1) For passage through the District or any part thereof, $10.32 for each statute mile, plus $138 for each lock transited, but with a minimum basic rate of $301 and a maximum basic rate for a through trip of $1322.

(2) For a movage in any harbor, $453.

(b) *District 2.*

(1) Southeast Shoal to Toledo or any point on Lake Erie west of Southeast Shoal, $623.

(2) Between points on Lake Erie west of Southeast Shoal, $368.

(3) Southeast Shoal to Port Huron Change Point or any point on the St. Clair River when pilots are not changed at Detroit Pilot Boat, $1085.

(4) Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $623.

(5) Southeast Shoal to Detroit Pilot Boat, $451.

(6) Toledo or any point on Lake Erie west of Southeast Shoal to Port Huron Change Point, when pilots are not changed at Detroit Pilot Boat, $1257.

(7) Toledo or any point on Lake Erie west of Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $809.

(8) Toledo or any point on Lake Erie west of Southeast Shoal to the Detroit Pilot Boat, $623.

(9) Detroit/Windsor to any point on the Detroit River and between points on the Detroit River, $368.

(10) Detroit/Windsor or any point on the Detroit River to Port Huron Change Point or any point on the St. Clair River, $816.

(11) Detroit Pilot Boat to any point on the St. Clair River, $816.

(12) Detroit Pilot Boat to Port Huron Change Point, $634.

(13) Between points on the St. Clair River, $368.

(14) Port Huron Change Point to any point on the St. Clair River, $451.

(c) *District 3.*

(1) Between the southerly limit of the District and the northerly limit of the District or the Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario, $1129.

(2) Between the southerly limit of the District and Sault Ste. Marie, Ontario or any point in Sault Ste. Marie, Ontario other than the Algoma Steel Corporation Wharf, $947.

(3) Between the northerly limit of the District and Sault Ste. Marie, Ontario, including the Algoma Steel Corporation Wharf, or Sault Ste. Marie, Michigan, $425.

(4) For a movage in any harbor, $425.

3. Section 401.410 is revised to read as follows:

§ 401.410 Basic rates and changes on undesignated waters.

(a) Except as provided under § 401.420 and subject to paragraph (c) of this section, the basic rates for each 6 hour period or part thereof that a U.S. pilot is on board in the undesignated waters shall be:

(1) In Lake Ontario, $243.

(2) In Lake Erie, $266.

(3) In Lakes Huron, Michigan and Superior, $228.

(b) Each time a U.S. pilot performs the docking or undocking of a ship in undesignated waters there is an additional charge of:

(1) In District 1, $232.

(2) In District 2, $205.

(3) In District 3, $217.

(c) The basic rate between Buffalo and any point on the Niagara River below the Black Rock Lock is, $523.

4. Section 401.420 is revised to read as follows:

§ 401.420 Cancellation, delay or interruption in rendition of services.

(a) Except as provided in this paragraph, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of $38 for each hour or part of an hour during which each interruption lasts with a maximum basic rate of $601 for each continuous 24 hour period during which the interruption continues. There is no charge for an interruption caused by ice, weather, or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. No charge shall be made for an interruption if the total interruption ends during the 6 hour period for which a charge has been made under § 401.410.

(b) When the departure or movage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of $38 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of $601 for each continuous 24 hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of $227;

(2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and

(3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of $38 for each hour or part of an hour including the first hour, with a maximum basis rate of $601 for each 24 hour period.

5. Section 401.428 is revised to read as follows:

§ 401.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point the pilot shall be paid at the rate of $232 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for those services. The change points to which this section applies are designated in § 401.450.

Dated: April 1, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-7920 Filed 4-8-87; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-328; RM-5372]

Radio Broadcasting Services; Giddings, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 268C2 for Channel 269A at Giddings, Texas, and modifies the license of Station KGID(FM) to specify operation on the new frequency, at the request of Radio Lee County, Inc. A site restriction of 26.9 kilometers (16.7 miles) south of the community is required. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-328, adopted March 13, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by revising Channel 269A to 268C2 for Giddings.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-7890 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-290; RM-5255, RM-5264, RM-5294]

Radio Broadcasting Services; Charlotte Amalie, VI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channels 241B1 and 246B to Charlotte Amalie, Virgin Islands, as that community's fifth and sixth FM channels, at the request of Bantam Broadcasting and Edward B. Reith, respectively. In addition, at the request of Virgin Islands Wireless Co., Inc., permittee of Station WVGN-FM, Channel 296A, Charlotte Amalie, Channel 287B is substituted for Channel 296A and the permit is modified to specify the new frequency, providing an additional wide coverage area FM service. A site restriction of 10.3 kilometers (6.4 miles) east of the community is required for Channel 246B. With the action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1987. The window period for filing applications on Channels 241B1 and 246B will open on May 19, 1987, and close on June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-290, adopted March 13, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended

2. Section 73.202(b), the Table of FM Allotments is amended, under Charlotte Amalie, Virgin Islands by adding Channel 241B1 and 246B and revising Channel 296A to 287B.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-7891 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-116; RM-5117, RM-5713]

Radio Broadcasting Services; Lomira and Ripon, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channels 294A to Lomira, Wisconsin, as a first FM Service at the request of Mayville-Horizon Radio Company. Also at the request of DeNovoCom, Inc., this document substitutes Channel 241A for 240A at Ripon, Wisconsin and modifies the license of Station KYUR-FM to specify operation on the new frequency, as that community's first wide area FM station. Channel 294A at Lomira requires a site restriction of 5.6 kilometers (3.5 miles) northwest of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1987. The window period for filing applications on Channels 294A at Lomira will open on May 19, 1987, and close on June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-116, adopted March 9, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW. Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.202(b), the Table of FM Allotments is amended under Wisconsin, by adding the entry of Lomira, Channel 294A and revising Channel 240A to 241A for Ripon.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-7892 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-258; RM-5307]

Television Broadcasting Services; Bryan, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document assigns UHF Television Channel 28 to Bryan, Texas, as that community's second commercial television service, at the request of SM Communications. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-258, adopted March 13, 1978, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Assignments, in the entry for Bryan, Texas, Channel 28 is added.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-7893 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 86-147; RM-5129]

Radio Broadcasting Services; Hancock, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 254C2 to Hancock, Michigan, as that community's second FM broadcast service, in response to a request from Thomas M. McNamara. Supporting comments were filed by Thomas McNamara. Since Hancock is within 320 kilometers of the common U.S.-Canadian border, Canadian concurrence has been obtained.

With this action, this proceeding is terminated.

EFFECTIVE DATE: May 11, 1987. The window period for filing applications will open on May 12, 1987, and close on June 11, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-147, adopted February 10, 1987, and released March 27, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, the entry for Hancock, Michigan is amended by adding Channel 254C2.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-7889 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Parts 73 and 74

[MM Docket No. 86-144]

Radio Broadcast Services; Experimental, Auxiliary, and Special Broadcast and Other Program Distributional Services; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects the effective date of the Final Rule (First Report and Order) published in this proceeding concerning the Radio Broadcast Services and certain commercial FM channels.

EFFECTIVE DATE: The correct effective date of the Final Rule is April 16, 1987.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg (202) 634-6530.

SUPPLEMENTARY INFORMATION: The Final Rule was published on March 17, 1987 (52 FR 8259).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-7887 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 70101-7001]

Pacific Coast Groundfish Fishery; Restriction

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

ACTION: Notice of fishing restriction and request for comments.

SUMMARY: NOAA issues this notice changing the size limit from 16.0 inches to 15.5 inches for processed sablefish caught off Washington, Oregon, and California, and seeks public comment on this action. This action is authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and will ease compliance with the 100-pound landing limit on sablefish less than 22 inches by fixed gear. The intended effect is to allow landings of processed sablefish which were legal size before processing.

DATES: This action is effective 0001 hours local time, Sunday, April 5, 1987, until modified, superseded, or rescinded.

Comments will be accepted through April 24, 1987.

ADDRESSES: Submit comments on these actions to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; or E. C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, E. C. Fullerton at 213-514-6196, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: Since March 1983 (48 FR 8283, February 28, 1983), landings of sablefish smaller than 22 inches (total length) under § 633.22(a)(3) have been limited in order to avoid biological stress on the stock which was predicted to occur if the harvest of juveniles were not curtailed. A 16-inch size limit also was established for processed ("headed") sablefish, measured from the tip of the tail to the farthest point where the dorsal fin attaches to the body. This size limit was based on the average length of 22-inch sablefish after processing. Because the conversion is based on an average, a substantial number of 22-inch fish measure less than 16 inches when processed. As a result, fishermen who measured fish at 22 inches before processing sometimes found they had unacceptably high levels of processed sablefish smaller than 16 inches. This problem increased in early 1987 when the trip limit for 22-inch sablefish caught with fixed gear was reduced to 100 pounds (round weight).

At the March 10-12, 1987 meeting of the Pacific Fishery Management Council (Council), data were presented that indicated over 99 percent of 22-inch whole sablefish would measure at least 15.5 inches when processed. Although this 15.5-inch limit also could enable fish smaller than 22 inches to be retained in excess of the trip limit if they are processed, the biological difference between a 15.5-inch and a 16.0-inch size limit is not considered significant and is not expected to stress the sablefish resource. This change allows fishermen to keep sablefish that would have been legal if not processed, removes uncertainty over whether a 22-inch sablefish will satisfy the legal heads-off limit when processed, and eases

compliance. Accordingly, the Council recommended that the size limit for processed sablefish be changed from 16.0 to 15.5 inches.

Secretarial Action

The Secretary concurs with the Council's recommendation and herein changes the size limit of processed sablefish from 16.0 to 15.5 inches.

No other change to size or trip limits for sablefish as published at 52 FR 790 (January 9, 1987) is made at this time.

Classification

The determination to change this fishing restriction is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

This section is taken under the authority of §§ 663.22 and 663.23, and is in compliance with Executive Order 12291. The action is covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

This notice revises a provision (52 FR 790, January 9, 1987), also issued under §§ 663.22 and 663.23, to reduce fishing levels for juvenile sablefish. This revision is a minor technical change with little biological impact, but with compliance benefits. Consequently, further delay of implementation is impracticable and contrary to the public interest, and this action is taken in final form effective Sunday, April 5, 1987.

The public has had opportunity to comment on this action. The public participated in the Groundfish Management Team, Scientific and Statistical Committee, and Council meetings in February and March 1987 that generated this change. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register.**

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: April 6, 1987.

Carmen J. Blondin,

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

[FR Doc. 87-7924 Filed 4-6-87; 3:37 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 68
Thursday, April 9, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1046

Milk in the Louisville-Lexington-Evansville Marketing Area; Proposed Termination of a Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rule.

SUMMARY: This notice invites written comments on a proposal to terminate a provision of the Louisville-Lexington-Evansville order. The proposed action would allow a cooperative association to be the responsible handler on milk of producers who are not members of the cooperative when such milk is delivered to pool plants of other handlers for the account of the cooperative association.

DATE: Comments are due on or before April 16, 1987.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the termination of the following provision of the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area is being considered:

1. In § 1046.9(c), the provision "of its producer members".

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, not later than 7 days after the publication of this notice in the **Federal Register.** It is necessary that the time for responding be limited in order that the termination procedure can be completed at the earliest possible date to adapt the order to a recent change in milk handling practices in the market.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed termination would permit a cooperative association to be the handler on milk of producers who are not members of the cooperative association when such milk is delivered to pool plants of other handlers for the account of the cooperative association.

Dairymen, Inc., requested that the proposed termination of a provision of the handler definition of the Louisville-Lexington- Evansville order be made effective in March 1987. The cooperative indicated that termination of the provision would:

(1) Facilitate the pooling of nonmember producer milk which has been pooled on the order for some time;

(2) Eliminate unnecessary reporting costs otherwise borne by the receiving city plant on such milk delivered for the account of Dairymen, Inc.;

(3) Allow the commingling of member and nonmember milk on the same farm-to-market routes and thereby lead to greater farm-to-market delivery efficiency; and

(4) Result in similar application under the Louisville-Lexington-Evansville order as applies under most other Federal milk marketing orders.

Therefore, comments are sought to determine whether the aforementioned provision should be terminated.

List of Subjects in 7 CFR Part 1046

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1046 continues to read as follows:

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

Signed at Washington, DC, on April 3, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87–7863 Filed 4–8–87; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Issuance or Amendment of Power Reactor License or Permit Following Initial Decision: Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On February 4, 1987 (52 FR 3442), the NRC published for public comment a proposed rule to revise its procedures that specify when a license, permit, or amendment can be issued following an initial adjudicatory decision by the presiding officer in favor of authorizing the issuance or amendment of a license or permit. The comment period for this proposed rule is to expire on April 6, 1987. The law firm of Shaw, Pittman, Potts & Trowbridge, on behalf of the Utility Nuclear Waste Management Group, has requested a thirty-day extension of the comment period. The request is granted. The extended comment period now expires on May 6, 1987.

DATES: The comment period has been extended and now expires May 6, 1987. Comments received after this date will be considered if it is practical to do so but assurance of consideration cannot be given except as to comments received before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the

Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Bollwerk, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634–3224.

Dated at Washington, DC, this 6th day of April, 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 87–7929 Filed 4–8–87; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital Maintenance; Risk-Based Capital Proposal

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Request for comments.

SUMMARY: Capital adequacy is one of the critical factors the Federal Deposit Insurance Corporation ("FDIC") is required to analyze in taking action on various types of applications, such as mergers and branches, and in the conduct of the FDIC's various supervisory activities related to the safety and soundness of individual banks and the banking system In February 1985, the FDIC s Board of Directors adopted a capital regulation and related policy statement that set forth (1) minimum standards of capital adequacy for insured state nonmember banks and (2) standards for determining when an insured bank is operating in an unsafe or unsound condition by reason of the amount of its capital (50 FR 11128 (1985)). This regulation, contained in Part 325 of the FDIC s rules and regulations, 12 CFR Part 325, was designed to establish, in conjunction with the other federal bank regulatory agencies, uniform capital standards for all federally regulated banking organizations, regardless of their size. These uniform capital standards were based on ratios of primary and total capital to total assets.

While these ratios of capital to total assets are a useful tool for assessing capital adequacy, the FDIC believes that there is a need for a measure that is more explicitly and systematically sensitive to the risk profiles of individual banking organizations, includinq risks related to off-balance sheet activities. As a result, in February 1986 (51 FR 6126, February 20, 1987), the FDIC issued for public comment a proposal for a supplemental adjusted capital measure that the FDIC would consider in tandem with existing ratios of capital to total assets. Based in part on comments received by the FDIC on that earlier proposal and in light of extensive discussions with other federal banking agencies and the Bank of England, the FDIC has revised its February 1986 proposal.

The FDIC is seeking comment on this revised proposal, which would apply to all FDIC-insured state nonmember banks. This proposal would (1) add a risk-based capital measure (also known as a risk asset ratio) to be used in tandem with existing capital ratios and (2) amend the definition of primary capital for purposes of computing existing capital to total assets ratios. This revised proposal represents an effort to establish uniform capital standards for all federally supervised banking organizations operating in the United States and to continue the process of coordinating with regulatory authorities of other countries to establish appropriate capital standards, in accordance with the International Lending Supervision Act of 1983, 12 U.S.C. 3901.

DATE: Comments on the proposal must be received by June 8, 1987.

ADDRESS: All comments should be submitted to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, or delivered to Room 6108 at the same address, between the hours of 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Stephen G. Pfeifer, Examination Specialist, or Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–6903.

SUPPLEMENTARY INFORMATION:

Background

Capital adequacy is one of the critical factors the Federal Deposit Insurance Corporation ("FDIC") is required to analyze in taking action on various types of applications, such as mergers and branches, and in the conduct of the FDIC s various supervisory activities related to the safety and soundness of individual banks and the banking system. In February 1985, the FDIC s Board of Directors adopted a capital regulation and related policy statement that set forth (1) minimum standards of capital adequacy for insured state nonmember banks and (2) standards for determining when an insured bank is operating in an unsafe or unsound condition by reason of the amount of its capital (50 FR 11128 (1985)). This regulation, contained in Part 325 of the FDIC's rules and regulations, 12 CFR Part 325, was designed to establish, in conjunction with the other federal bank regulatory agencies, uniform capital standards for all federally regulated banking organizations, regardless of their size. These uniform capital standards were based on ratios of primary and total capital to total assets.

In addition to relying on capital to total assets ratios, the FDIC historically has taken account of many other risk factors when evaluating a bank's capital adequacy. Indeed, the nature and degree of a bank's risk exposure have always been important subjective factors in assessing capital adequacy In view of the above, the FDIC determined that it might be useful to modify its capital requirements to be more explicitly and systematically sensitive to the risk exposure of individual banks. Consequently, in February of 1986, the FDIC requested comment on a supplemental adjusted capital measure that the FDIC proposed to consider in tandem with its existing minimum primary and total capital to total assets ratios when analyzing the capital levels of insured state nonmember banks (51 FR 6126 (1986)). The Board of Governors of the Federal Reserve System and the Office of the Comptroller of the Currency also issued similar proposals (51 FR 3976 (1986) and 51 FR 10602 (1986), respectively).

Specific goals of the supplemental adjusted capital proposal were to (1) assess a capital requirement against certain off-balance sheet exposures; (2) temper disincentives inherent in the existing guidelines to hold low risk, relatively liquid assets; and (3) move U.S. capital adequacy policies into closer alignment with policies currently in use or under development in other major industrial countries. This last objective was considered of particular importance in view of increasing global banking competition and the desirability of achieving greater convergence in the measurement and assessment of capital adequacy of multinational banking organizations.

Subsequent to the issuance of the FDIC's February 1986 proposal and after reviewing the comments received, discussions were held between the

staffs of the U.S. bank regulatory agencies and the Bank of England. The Bank of England has utilized a risk asset ratio for a number of years, and early last year published a consultative paper on incorporating the credit risks associated with certain off-balance sheet items into the United Kingdom's risk asset framework. In light of the fact that both U.S. and U.K. supervisors were in the process of addressing similar issues, these joint discussions between U.S. and U.K. bank regulators provided a useful forum to explore the feasibility of bringing the bank capital requirements of the two countries into closer alignment. A proposed U.S./U.K. Agreement developed from these discussions and represents an important step toward the convergence of capital requirements among countries with major banking institutions, consistent with the terms of the International Lending Supervision Act of 1983, 12 U.S.C. 3901

The proposed U.S./U.K. Agreement encompasses (1) a common definition of primary capital that differs somewhat from the FDIC s existing Part 325 definition and (2) common risk asset categories that also differ in some respects from those contained in the FDIC's February 1986 proposal. As a result, the FDIC is requesting comment on the following risk-based capital proposal, which is based on the framework developed jointly by representatives of the Bank of England and the staffs of the Office of the Comptroller of the Currency (OCC), the Federal Reserve System (FRS) and the Federal Deposit Insurance Corporation during the latter part of 1986. A summary of the major aspects of the FDIC risk-based capital proposal is included in Appendix A and the text of the proposed Agreement between the U.K. and U.S. bank regulators is contained in Appendix B.

Differences Between Current Proposal and February 1986 Proposal

The FDIC's revised proposal differs in several respects from its February 1986 proposal, primarily as a result of further discussions with the OCC and the FRS, review of the public comments on the February 1986 proposal, and efforts to coordinate the proposals of the three federal banking agencies with the views of the Bank of England. Some of the major differences between this revised proposal, which is based on the proposed U.S./U.K. Agreement, and the February 1986 proposal, are discussed below.

Definition of Capital—First, the February 1986 proposal did not address the definition of capital. However, the FDIC believes that a common understanding of what constitutes primary capital, as incorporated in the proposed U.S./U.K. Agreement, is an essential part of any effort to achieve the convergence of capital requirements on an international basis. To that end, the FDIC's revised proposal includes a definition of primary capital that would revise the definition contained in the FDIC's Part 325 capital maintenance regulation. The revised definition of primary capital would be used in calculations for both the proposed risk-based capital ratio and for the primary and total capital to total assets ratios specified in the FDIC's Part 325 capital maintenance regulation. Thus, while the proposed risk-based measure would be used in tandem with existing measures, as was suggested in the FDIC's February 1986 proposal, the numerator of the existing primary and total capital to total assets ratios would be redefined. The revised proposal creates two categories of primary capital: *base primary capital*, which consists of certain primary capital funds that would be counted in full in the calculation of capital ratios; and *limited primary capital*, which would be included to a limited extent as primary capital in calculating capital ratios. The proposal also includes certain deductions from primary capital for purposes of calculating these capital ratios.

Uniform Minimum Ratio for U.S. and U.K.—Second, as set forth in the proposed U.S./U.K. Agreement, the regulatory authorities intend to set a uniform minimum acceptable ratio of adjusted primary capital to weighted risk assets, calculated from publicly available information, for banking organizations in both the United States and the United Kingdom. Moreover, the proposal is intended to serve in part as a vehicle to seek broader convergence in the assessment of the capital adequacy of international banking organizations. In contrast, the FDIC's February 1986 proposal would have applied to only U.S. banking organizations. The FDIC would expect that only sound, well-managed banking organizations without any material financial or operating deficiencies, and without any undue risk exposures or significant supervisory weaknesses, would operate at the minimum risk-based capital ratio. As the proposed U.S./U.K. Agreement points out, most institutions would be expected to operate with capital ratios above the minimum level. The actual minimum risk-based capital ratio will not be established until there is a final determination as to the appropriate primary capital definition, risk weights, and asset categories, and until the necessary financial information has been collected from the banking industry. Nonetheless, based on the terms and structure of the revised proposal, preliminary estimates using available information indicate that a minimum risk based capital ratio might possibly be established somewhere within the 5 to 7 percent range.

Risk Categories—Third, the FDIC's revised proposal includes five categories of weighted risk assets, to be weighted at 0, 10, 25, 50, or 100 percent, depending on the identity of the obligor and, where appropriate, on the maturity of the instrument. (See Table 1 in Appendix A.) These categories represent a change from the FDIC's February 1986 proposal, which included four categories of weighted risk assets: 0, 30, 60, and 100 percent. This change results in a somewhat lower risk weight for many of the assets originally assigned to the 30 and 60 percent weighted risk asset categories In addition, the list of assets that would be assigned to each category differs in some respects from the list proposed in the FDIC's February 1986 proposal.

Claims on Foreign Banks and Governments—Fourth, the FDIC's revised proposal does not distinguish between claims on foreign banks or governments based on the identity of the foreign country. The February 1986 proposal generally placed claims on foreign banks and governments of industrial countries in a lower risk category than claims on foreign banks and governments of nonindustrial countries, and generally placed short-term claims on U.S. banks in a lower risk category than similar claims on foreign banks.

Off-Balance Sheet Risk Weights—Fifth, in the case of off-balance sheet items, risk weights are determined by a two-step process, rather than by a simple categorization of off-balance sheet items in one of the weighted risk asset categories, as suggested in the February 1986 proposal Under the revised proposal, the face amount of each off-balance sheet item is multiplied by an appropriate "credit conversion factor," a ratio designed to translate the face amount of certain off-balance sheet exposures into rough on-balance sheet credit equivalents. (See Table 2 in Appendix A.) The resulting figure is then placed in one of the five risk asset categories and included in the asset component (i.e., the denominator) of the risk-based capital ratio. (See Tables 3 and 4 in Appendix A.) This revised treatment results in risk weights for some off-balance sheet items that are

slightly lower than the weights originally proposed.

Consumer Loan Commitments—Sixth, the FDIC's revised proposal includes loan commitments to consumers as a form of credit commitment that requires some capital support. The February 1986 proposal did not define such loan commitments to include commitments to extend credit to consumers.

Similarities Between Current Proposal and February 1986 Proposal

The general construction of many aspects of the FDIC's revised proposal remains similar to that of the FDIC's February 1986 proposal.

Risk Asset Ratio Calculation—First, an institution's weighted risk-based capital ratio continues to be determined by dividing its primary capital base by the sum of its weighted risk assets. The weighted risk assets are determined by assigning all assets (as well as off-balance sheet items) to appropriate risk categories. An illustration of how the proposed ratio would be calculated is contained in Table 3 of Appendix A.

Evaluation of Capital Adequacy—Second, this revised proposal contemplates. as did the February 1986 proposal, that the calculation of a risk-based capital ratio is only one step in evaluating capital adequacy. Many other factors must be taken into account in connection with the examination process before an overall determination of capital adequacy can be made, including the quality and diversity of the loan portfolio, the quality, trend and variability of earnings, the dividend payout ratio and the level and trend of retained earnings, liquidity and the structure of liabilities, the effectivenesss of loan and investment policies, and management's overall ability to monitor and control risks, including those risks arising from trust department operations. Of these factors, asset quality is particularly critical. Thus, while not explicitly incorporated into the proposed risk asset ratio, the assessment of capital adequacy must take account of the composition of the loan portfolio, including foreign or domestic loan concentrations, and the level and severity of *nonperforming* and *classified* assets. Adjustments based upon these factors made by examiners and supervisors will mean that the final supervisory judgment of an organization's capital adequacy may differ significantly from conclusions that might be drawn solely from the absolute level of the organization's risk-based capital ratio.

Applicability—Third, as in the February 1986 proposal, the revised risk-based asset framework contemplates that U.S. banking regulators would apply the minimum risk-based capital ratio to all banking organizations that they supervise. Thus, the FDIC would apply the proposed Agreement to all state nonmember commercial and savings banks. The application of the risk-based capital framework to both large and small banking organizations will avoid the possible introduction of a dual standard based upon size.

Foreign Exchange and Interest Rate Risk—Fourth, the revised proposal does not factor in all types of risk, and it contemplates, as did the February 1986 proposal, continued efforts to evaluate and refine the risk-based ratio. Under the proposed U.S./U.K. Agreement, the FDIC, the OCC, the FRS and the Bank of England are committed to continue efforts to develop techniques for factoring counterparty credit risks of interest rate swaps and other interest rate and foreign exchange contracts into the risk-based capital ratio in the near future. In addition, the proposed U.S./U.K. Agreement indicates a commitment to introduce a capital requirement for exchange rate risk. Finally, the Agreement also reflects a commitment to factor a more direct measure of overall interest rate risk into the capital ratio. Since the development of the proposed U.S./U.K. Agreement, additional discussions have been held between U.S and U.K. regulators for the purpose of devising a proposal for incorporating the counterparty credit risks of interest rate swaps and foreign exchange rate contracts into the risk-based capital framework. As a result of those discussions, the Bank of England and the Federal Reserve have agreed to issue such a proposal for public comment and the FDIC intends to evaluate the comments received by the Federal Reserve in response to that proposal. In addition, copies of the Federal Reserve proposal will be provided to interested parties upon request.

Proposed Definition of Primary Capital

The proposed risk-based capital ratio would relate an institution's adjusted primary capital (the numerator of the ratio) to its weighted risk assets (the denominator). One of the principal qualities of primary capital is that it is freely available to absorb current losses while permitting an organization to continue to function as a going concern. Under the proposed U.S./U.K. Agreement, primary capital is defined for purposes of the risk-based capital ratio to consist of two classes of capital funds: "*base primary capital*," that is, capital funds treated as primary capital without limit, and "*limited primary capital*," that is, primary capital funds that are limited to a specified percentage of base primary capital. The proposed Agreement includes a listing of the components of the two categories of primary capital. (See Appendix B.)

Base Primary Capital—Base primary capital consists of capital funds that are treated as primary capital *without a percentage limitation.* These capital funds include: (1) Common stockholders equity (common stock, surplus and undivided profits); (2) general reserves for unidentified losses (including the allowance for losses on loans and leases, but excluding reserves that, in effect, have been allocated for known losses, such as the "allocated transfer risk reserve"); and (3) minority interests in the equity accounts of consolidated subsidiaries.[1]

Although the proposed U.S. /U.K. Agreement includes general (valuation) reserves as a component of base primary capital, U.S. and U.K. regulators agree that provisions made against identified losses should not be regarded as primary capital. Such provisions, having been set aside to absorb identified losses, cannot be viewed as being freely available to absorb estimated or potential losses, a principal function of primary capital.

Limited Primary Capital—Limited primary capital consists of capital funds that are treated as primary capital *subject to a percentaqe limitation.* Limited primary capital is considered to be primary capital to the extent that, on a combined basis, it does not exceed 50 percent of the amount that results from subtracting *all* intangible assets from base primary capital, including those intangible assets that are otherwise considered "grandfathered" intangible assets as discussed below. Existing limited primary capital instruments in excess of this limitation would be "grandfathered" and, therefore, included in primary capital, *provided* that such limited primary capital instruments were issued prior to the final adoption of the risk-based capital ratio and provided that such limited primary capital instruments comply with the FDIC's then existing definition of primary capital and with the related restrictions on inclusion of such instruments in primary capital. However, if the grandfathering provision

[1] Although minority interests in consolidated subsidiaries are generally included in primary capital without limit, exceptions to this general rule would be made if the minority interest fails to provide any meaningful capital support to the consolidated entity. Such a situation could arise if the minority interest is entitled to a preferred claim on essentially low risk assets of the subsidiary

causes the aggregate amount of limited primary capital instruments to exceed the amount permitted under this proposal, new limited primary capital instruments would not be included as primary capital until the new limited primary capital, together with the grandfathered instruments, comply with the new proposed restriction on the amount of limited primary capital.

Limited primary capital funds include: (1) Perpetual preferred stock,[2] (2) limited-life preferred stock with an original maturity of at least 25 years; [3] (3) debt that is subordinated to deposits and that meets the new criteria set forth in the proposed U.S./U.K. Agreement for inclusion in primary capital; and (4) the amount of mandatory convertible securities issued before the final adoption of the risk-based ratio by the FDIC if such securities counted as primary capital under the FDIC's then existing Part 325 capital maintenance regulation.

Limited-Life Preferred Stock. Although common stockholders' equity should remain the dominant form of capital, the FDIC believes that the inclusion of some long-term limited-life preferred stock as primary capital is appropriate. In this regard, the FDIC believes it would be appropriate to include limited-life preferred stock with an original maturity of 25 years or more as a component of limited primary capital and to adjust for the amount of such preferred stock included in primary capital by discounting the preferred stock as maturity approaches. This discounting process is necessary because, as limited-life preferred stock approaches maturity, it must either be redeemed or refunded, thereby becoming more like a current liability and less like a component of capital.

The FDIC is seeking comment on the best method of discounting limited-life preferred stock for capital adequacy purposes as maturity approaches. One such discounting method would be to discount the original outstanding balance for capital assessment purposes by 20 percent each year during the instrument's last five years before maturity. The amount of outstanding limited-life preferred stock that is not included in primary capital as a result of this discounting process could be included in secondary capital, provided it meets the general criteria for inclusion in secondary capital as that term is defined in the FDIC's Part 325 capital maintenance regulation.

Debt Instruments. The proposed U.S./U.K. Agreement also establishes new criteria for including debt instruments in primary capital. These criteria are designed to ensure that such debt instruments (1) are permanent; (2) provide strength and loss absorption capacity and, when serious losses occur, permit the organization to continue to operate as a going concern; and (3) provide the issuer with the option, under certain conditions, to defer interest payments during periods of serious financial adversity.

The new criteria, which are essentially similar to those incorporated in the Federal Reserve Board's existing definition of perpetual debt, are:

(1) The instruments must be subordinated to deposits.

(2) The instruments can only be converted into or redeemed with equity or equity equivalents. For state nonmember banks supervised by the FDIC, this means that (a) the instrument cannot provide the holder with any right to demand repayment of principal (even in the event of nonpayment of interest), except in the event of bankruptcy, insolvency or reorganization; and (b) the issuer cannot voluntarily redeem the securities without the approval of the FDIC, except that securities may be simultaneously replaced by a like amount of capital instruments that qualify as primary capital under the U.S./U.K. Agreement's new definition.

(3) The instruments must be available to absorb losses when necessary to allow the organization to continue to operate as a going concern. Thus, the instrument must convert automatically to common or preferred stock that qualifies as primary capital in the event that the issuer's undivided profits and surplus accounts become negative.

(4) The instruments must provide the option for the issuer to defer (they may also allow the issuer to reduce or eliminate) cash interest payments if the issuer does not report a profit in the preceding period (defined as combined profits for the most recent four quarters) and/or if the issuer eliminates cash dividends on common and preferred stock. This provision is intended to provide the issuer with the option of mitigating the burden associated with interest payments during a period of severe financial stress.

Any debt instrument meeting these broad criteria, so long as the debt instrument does not contain other provisions inconsistent with safe and sound banking practices, would qualify as limited primary capital. Mandatory convertible securities, as presently defined by the FDIC, would henceforth be included in primary capital only to the extent that such instruments also satisfy the proposed criteria set forth above. Thus, mandatory convertible instruments that provide for conversion to equity and deferment of interest in accordance with the criteria specified above would qualify as primary capital. Moreover, mandatory convertible securities issued before the date that this risk-based capital ratio is finally adopted by the FDIC and that comply with the then existing, but not the new, criteria for inclusion in primary capital would be "grandfathered" as limited primary capital. However, only the amount of such mandatory convertible securities included in primary capital under the previous criteria would be grandfathered.

Deductions for Primary Capital—The FDIC's revised proposal and the U.S./U.K. Agreement on which the proposal is based calculate primary capital by first adding base primary capital and limited primary capital, and then deducting all intangible assets (except "grandfathered" intangible assets as discussed below), equity investments in unconsolidated subsidiaries and associated companies, and investments in certain consolidated subsidiaries, which are also discussed below.

Intangible Assets. All intangible assets, other than those previously approved or permitted by the FDIC under its current Part 325 capital maintenance regulation, would be deducted from primary capital. Generally, the FDIC's current Part 325 regulation includes in the capital of state nonmember banks intangible assets in the form of mortgage servicing rights. Thus, the specific intangibles that were acquired before the final adoption of the risk-based ratio and that were permitted to be included under the FDIC's then existing Part 325 capital maintenance regulation would not be deducted from primary capital. Rather, such intangibles would be grandfathered for a limited, but as yet unspecified period of time, such as the assets' useful lives or a shorter period. Intangible assets acquired after the date of final adoption of this risk-based ratio would be deducted from primary capital. It should be noted that the specific intangible assets would be grandfathered; existing dollar amounts of intangibles would not be permanently grandfathered. Although all intangibles acquired after this

[2] Perpetual preferred stock is defined as preferred stock that does not have a stated maturity date and that cannot be redeemed at the option of the holder.

[3] Limited-life preferred stock currently is considered to be an element of secondary capital; thus, the proposed U.S./U.K. Agreement represents a change from the FDIC's current capital requirements. The maturity of limited-life preferred stock is defined by the stated maturity date or the earliest point in time at which the instrument can be redeemed at the option of the holder, whichever occurs first.

proposal is adopted would be deducted from primary capital for the purpose of assessing capital adequacy, the FDIC may on a case-by-case basis exempt from this deduction intangibles acquired in connection with a supervisory merger involving a failing institution

Because the manner in which intangible assets are grandfathered may have a significant impact on an institution's capital ratios, the FDIC is seeking public comment on the most appropriate approach for grandfathering intangible assets, including the possible adoption of an approach that would grandfather intangible assets for the lesser of the useful lives of such intangibles or a specified period of time, such as ten or fifteen years.

While U.S. regulators intend to grandfather existing intangible assets for the purpose of calculating capital ratios, the FDIC will continue to monitor the level and quality of all intangible assets and, as it does now, to consider tangible as well as stated capital ratios in assessing an organization's overall capital adequacy. In this regard, the FDIC will expect banking organizations experiencing substantial growth, internally or through acquisitions, to maintain strong capital positions substantially above minimum supervisory ratios without significant reliance on intangibles.

Equity Investments. The revised risk-based capital proposal contemplates deducting equity investments in all unconsolidated subsidiaries and associated companies, including joint ventures,[4] from capital (i.e., from the numerator) as well as from the denominator of the proposed risk-based ratio and the existing Part 325 capital to assets ratios. The FDIC believes that because the assets of unconsolidated subsidiaries and associated companies are not fully reflected in a banking organization's consolidated total assets, such assets are the equivalent of off-balance sheet assets. Although these assets are not explicitly taken into account in calculating a banking organization's consolidated capital to assets ratios, they nonetheless expose the organization to risk. For this reason, the FDIC believes that it would be appropriate to view the equity capital invested in these entities as primarily supporting the risk inherent in the assets of such unconsolidated subsidiaries and joint ventures, and not generally available to support risks elsewhere in the organization. Thus, the proposal provides for the deduction of the equity capital supporting these activities from an organization's consolidated primary capital. While this treatment suggests that the assets of unconsolidated subsidiaries and joint ventures would not be included in the calculation of an organization's consolidated risk-based capital ratio, the FDIC would continue to evaluate the capital adequacy and risks of these entities and their potential impact on the consolidated organization.

Consolidated Subsidiaries. Under this revised proposal and the proposed U.S./U.K. Agreement, the FDIC will evaluate the activities of consolidated subsidiaries in order to determine whether to deduct investments in such activities from primary capital and, if so, how such deductions should be made. Such determinations could be made through additional amendments to the FDIC's Part 325 capital maintenance regulation for all subsidiaries engaged in certain activities, or this determination could be made on a case-by-case basis. The FDIC presently requires that investments in securities subsidiaries established pursuant to § 337.4 of its rules and regulations must be deducted when calculating the level of primary and total capital under its Part 325 capital maintenance regulation. In addition, the FDIC has proposed a revision to Part 332 of its regulations that would require investments by state nonmember banks in subsidiaries engaged in real estate development activities to be similarly deducted. In this regard, the FDIC would intend to seek public comment before implementing any proposed regulatory amendment to deduct any investments in other subsidiaries for the purpose of assessing capital adequacy.

Interbank Holdings of Capital. Under the proposed U.S./U.K. Agreement, the Bank of England would continue its current practice of deducting from capital all interbank holdings of capital, that is, holdings of capital securities issued by other banks. U.S. regulatory agencies have agreed to monitor banking organizations' holdings of capital instruments issued by other commercial banking organizations and may, on a case-by-case basis, require the deduction from primary capital of holdings of primary capital instruments issued by other banking organizations. Such deductions would be made in the case of reciprocal or other artificial arrangements in which banking organizations swap primary capital instruments in order to raise their capital ratios without in reality raising new capital funds. However, holdings of capital instruments issued by other banking organizations but taken in satisfaction of debts previously contracted would be exempt from any deduction from primary capital.

Proposed Risk Weights for Assets and Off-Balance Sheet Activities

Although the February 1986 proposal did not contemplate any changes in the manner in which primary capital is defined for purposes of a risk-based ratio, both the February 1986 proposal and this revised proposal provide that primary capital, as determined, would be compared with a banking organization's total assets weighted for risk considerations in order to determine the risk-based capital, or the risk asset, ratio. Under this revised proposal, each of a banking organization's assets is assigned to one of five risk categories and weighted according to the relative risk of that category. The determination of asset groupings and the assignment of weights primarily reflect credit risk considerations, with some sensitivity to liquidity and interest rate risk. This revised proposal, and the proposed U.S./U.K. Agreement on which it is based, contain some significant modifications from the February 1986 proposal in the manner in which certain risk weights are assigned.

Off-Balance Sheet Credit Conversion Factors—First, a "credit equivalent" approach is used in weighting the risks of off-balance sheet activities. Under this approach, the face amount of an off-balance sheet item is multiplied by a credit conversion factor and the resulting amount is assigned to the appropriate risk category depending upon the identity of the obligor and, in certain cases, the maturity of the instrument. The FDIC's February 1986 proposal assigned both assets and certain off-balance sheet items directly to the risk categories without the use of any credit conversion factor.

Consumer Credit Lines—Second, the revised proposal explicitly includes commitments to extend credit to consumers within the category of commitments for which a capital requirement is being proposed. Such consumer credit lines would be multiplied by a credit conversion factor to reach a credit equivalent amount. That amount would then be assigned to the appropriate risk category depending on the identity of the obligor. The explicit inclusion of consumer credit lines as commitments represents a change from the FDIC's February 1986 proposal.

[4] The definitions of unconsolidated subsidiaries, associated companies, and joint ventures are contained in the Instructions to the Consolidated Reports of Condition and Income issued by the Federal Financial Institutions Examination Council (FFIEC).

Collateral and Guarantees—Third, although the revised proposal does not explicitly recognize general forms of collateral or guarantees in calculating asset risk, the proposal recognizes collateral in the form of cash and U.S. Treasury, Government agency and Government-sponsored agency securities, as well as guarantees by the U.S. Government and Government agencies. Thus, the proposal includes in the 25 percent risk category claims fully collateralized by cash on deposit in the lending institution or by U.S. Government or Government agency securities, as well as portions of claims guaranteed by the U.S. Government or U.S. Government agencies. Claims collateralized by U.S. Government-sponsored agency debt are assigned to the 50 percent weight category. (The definitions of Government agencies and Government-sponsored agencies are discussed below in the sections that describe the 10 percent, the 25 percent, and the 50 percent risk categories.) The FDIC's proposal thus recognizes the risk-reducing effects of collateral in the form of U.S. Government securities and cash, but does not explicitly take account of any other form of collateral, guarantees or credit enhancements. However, all forms of collateral and guarantees will be considered by examiners in evaluating asset quality and will be taken into account in making an overall assessment of capital adequacy.

Country Transfer Risk—Fourth, this proposal does not explicitly incorporate transfer risk distinctions among foreign countries when assigning assets and off-balance sheet items to risk categories. The FDIC's February 1986 proposal placed short-term claims on U.S. banks in a lower risk category than similar claims on foreign banks. The FDIC's earlier proposal also further distinguished between claims on banks and governments in industrial versus nonindustrial countries, based on the International Monetary Fund (IMF) and World Bank's list of industrial market economies. This revised proposal treats claims on all banks, foreign and domestic, in an equivalent fashion and places in the standard risk category claims on *all* foreign governments that involve transfer risk.

Although the proposed risk-based capital ratio thus does not take account of transfer risk distinctions among foreign countries, transfer risk will continue to be monitored closely in the examination process, and banks with large exposures to high-risk countries will be required to maintain capital positions above the minimum ratios. Evaluation of transfer risk on an individual basis is consistent with the requirements of section 904 of the International Lending Supervision Act of 1983, 12 U.S.C. 3903 (a) and (b), which provides that federal banking agencies shall establish examination and supervisory procedures to assure that such foreign country exposure and transfer risk are taken into account in evaluating the capital adequacy of banking institutions.

In incorporating explicit distinctions among foreign countries in its February 1986 proposal, the FDIC had hoped that the use of simple, objective criteria to account for transfer risk would be more practical than country-by-country evaluations that would require frequent updating and publication. However, the FDIC removed from this current proposal any explicit transfer risk distinctions among foreign countries for several reasons. For one, the list of industrialized countries compiled by the IMF, while perhaps more acceptable than possible alternatives, is not based upon prudential criteria or transfer risk considerations. Moreover, it is difficult to develop simple objective criteria that effectively distinguish countries with high and low degrees of transfer risk. Finally, the treatment of country risk contained in the FDIC's February 1986 proposal could be viewed as different from the typical approach used in the risk-based capital measures of other countries, which assign a low risk weight to claims on their own governments or groups of affiliated governments, while assigning claims on all other governments to the equivalent of a standard risk category. Thus, the February 1986 proposal might have conflicted with the FDIC's stated goal of converging United States capital policies with those of other industrial countries.

While the revised proposal does not incorporate explicit transfer risk distinctions among foreign countries, transfer risk considerations are not totally absent from the proposal. Thus, as described below, local currency claims on foreign central governments are placed in a relatively low (25 percent) risk category *to the extent* the bank has local currency liabilities booked in offices located in the foreign country. The reason for this is that such claims constitute national government obligations that do not involve transfer risk. All foreign government obligations that involve transfer risk (that is, all other claims on foreign governments) are assigned to the standard (100 percent) risk category.

Description of Risk Categories—The types of assets and off-balance sheet items in each category and the rationale for assigning certain items to a particular category are discussed below. Generally, unless otherwise specified, short-term assets are defined as claims with a remaining maturity of one year or less; long-term assets are defined as claims with a remaining maturity of more than one year. The tables in Appendix A provide a summary of the major risk-based asset and off-balance sheet items as they pertain to state nonmember banks, and an illustration of how the proposed risk-based capital ratio would be calculated.

Category I—Zero Weight. For U.S. banking organizations, this category includes assets generally considered riskless, such as vault cash (domestic and foreign) and balances with and claims on Federal Reserve Banks, excluding Federal Reserve Bank stock.

Category II—10 Percent Weight. This category includes claims on the U.S. Government and U.S. Government agencies, that is, federal agencies whose debt obligations are explicitly guaranteed by the full faith and credit of the U.S. Government.[5] The placement of such claims in a 10 percent risk category is based on the view that, although claims on the U.S. Government bear no credit risk and are highly liquid, such claims could involve some degree of interest rate risk exposure. As footnote 1 in the proposed U.S./U.K. Agreement indicates, the Bank of England and the Federal Reserve favored the inclusion of all long-term (i.e., remaining maturity of more than one year) claims on domestic national governments and their agencies in the 25 percent risk category in order to reflect an additional adjustment for potential interest rate risk. However, the FDIC and OCC dissented from that viewpoint and contended that, until a systematic interest rate risk framework is developed, all claims on the U.S. Government should be placed in the same risk category, regardless of maturity. In view of the above, the FDIC seeks comment on the appropriate risk weighting for claims on the U.S. Government and on whether the remaining maturity of such securities should be a factor when determining the appropriate risk weight.

Category III—25 Percent Weight. This category includes short-term interbank claims and assets that normally have

[5] Examples of federal agencies whose debt obligations are backed by the full faith and credit of the U.S. Government include the Export-Import Bank, the Farmers Home Administration (FmHA), the Federal Housing Administration (FHA), the Government National Mortgage Association (GNMA), the Small Business Administration (SBA), and the Veterans Administration (VA).

little or no risk of default and a significant degree of liquidity. The specific items included in this category are: short-term claims (including demand deposits) on domestic depository institutions[6] and on all foreign banks[7] (including foreign central banks);[8] cash items in the process of collection, foreign and domestic; claims (including repurchase agreements) fully collateralized by cash on deposit in the lending institution or by U.S. Government or U.S. Government agency debt; portions of loans guaranteed by the U.S. Government or U.S. Government agencies; and local currency claims on foreign central governments [9] to the extent that a bank has local currency liabilities in the foreign country.

Several elements of this category differ from those included in the FDIC's February 1986 proposal. As noted above, the treatment of *short-term* claims on *foreign banks* differs from the FDIC's original proposal in that such claims on foreign banks are assigned to the same risk category as short-term claims on U.S. banks, and no distinction is made among foreign banks based upon country or origin. The decision to include in this category short-term claims (i.e., maturities of *one year* or *less*) on all banks, domestic and foreign, reflects comments received in response to the FDIC's February 1986 proposal that the inclusion in a low-risk category of only claims on U.S. banks with maturities of three months or less would discourage intermediate-term lending and could have a negative impact on the interbank funding markets.

The assignment of short-term claims on all banks, foreign and domestic, to the 25 percent category reflects a recognition of the importance of facilitating the smooth and efficient functioning of the interbank funding markets and a desire to avoid discouraging banks from holding liquid interbank claims. This treatment also reflects a recognition of the fact that national governments generally have established supervisory frameworks to promote the stability of their banking systems.

In general, the revised proposal does not explicitly recognize collateral or guarantees. However, the revised proposal includes in the 25 percent risk category claims fully *collateralized* by cash on deposit in the lending institution or by U.S. Government or Government agency securities, and portions of claims *guaranteed* by the U.S. Government or U.S. Government agencies.[10] In addition, claims on U.S. Government-sponsored agencies and claims collateralized by U.S. Government-sponsored agency debt are assigned to the 50 percent weight category. The FDIC's revised proposal thus recognizes the risk-reducing effect of collateral in the form of U.S. Government securities and cash.

The risk-based capital framework does not explicitly take account of any other form of collateral, guarantees or so-called credit enhancements. Thus, collateral in the form of foreign government debt or domestic local government debt, or guarantees issued by foreign or domestic local governments, do not affect the assignment of claims to risk categories. In addition, the proposal does not explicitly recognize guarantees in the form of the sale of risk participations in bankers acceptances or standby letters of credit, or credit enhancements in the form of standby letters of credit backing outstanding loans or investments. This latter treatment differs to some degree from the FDIC's February 1986 proposal which did recognize explicitly the sale of risk participations in bankers acceptances. The main reasons for these changes were to bring the proposed treatment of these particular items into line with the proposal's general approach to guarantees and to coordinate the FDIC's proposal with the views of the other regulatory authorities.

The regulatory authorities do not wish to discourage legitimate arrangements designed to reduce credit exposure. Thus, collateral and guarantees are currently and will continue to be considered by examiners in evaluating asset quality and are taken into account, along with other relevant factors, in making an overall assessment of capital adequacy The presence of guarantees and collateral, if prudently administered and controlled, may mean that an organization can operate with lower levels of capital (although still at or above the minimum) than would otherwise be required if the organization had not taken steps to limit its credit exposure.

Nonetheless, there are several reasons for this very limited recognition of collateral and guarantees. First, recognition of collateral more broadly would significantly complicate the measure and could greatly expand any reporting requirements established to monitor the risk-based measure. Second, the existence of collateral may not always preclude losses since legal or operational problems could arise affecting a bank's control over or access to underlying collateral. Third, guarantees are only as good as the strength of the guarantor; thus, explicit recognition of guarantees beyond what is contained in the proposal would suggest the need to make individual credit judgments on guarantors, judgments that would appear to be better left to the onsite supervisory examination process. Finally, guarantees vary in content, and may contain clauses or conditions that could limit the protection provided to the lender under certain circumstances. All of these factors suggest that the effect of collateral and guarantees on bank exposure are more appropriately evaluated in the course of the onsite examination.

The FDIC's February 1986 proposal assigned trading account assets to the 30 percent risk category. The revised proposal does not incorporate this approach; rather, all assets, including *trading account assets*, are assigned directly to the appropriate risk category depending upon the identity of the obligor and, if applicable, the maturity of the instrument. Many of the assets currently in bank trading accounts, such as U.S. Government and agency securities, short-term obligations of banks, and general obligation municipal securities, are assigned weights of 10, 25 or 50 percent, well below the 100 percent

[6] Domestic (U.S.) depository institutions are defined to include both the U.S. and foreign branches of banks and depository institutions chartered and headquartered in the U.S. The term includes U.S. chartered banks and depository institutions owned by foreigners, but excludes U.S. branches and agencies of foreign banks. In addition to banks, domestic depository institutions include mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, and international banking facilities of domestic banks and depository institutions.

[7] Foreign banks are defined as organizations that are organized under laws of a foreign country; engage in the business of banking; are recognized as banks by the bank supervisory or monetary authorities of the country of their organization or principal banking operations; receive deposits to a substantial extent in the regular course of business; *and* have the power to accept demand deposits. Claims on foreign banks are defined to include claims on the U.S. branches and agencies of the foreign banks.

[8] Such short-term claims on banks and domestic depository institutions are included in this category regardless of the form of the instrument, that is, this category includes federal funds sold, certificates of deposit, Eurocurrency placements, repurchase agreements, and bankers acceptances for which the account party is a domestic depository institution or a foreign bank

[9] Foreign governments are defined to include the central government and its ministries, departments, and agencies; they do not include state, provincial or local governments in foreign countries or government-owned enterprises. In addition, claims on foreign governments do not include claims on nongovernmental entities guaranteed by foreign governments.

[10] See footnote 5 for examples of federal agencies that are defined as U.S. Government agencies for the purpose of this risk-based capital proposal.

weight that is implicit in the FDIC's existing capital to total assets requirement. Nonetheless, the FDIC recognizes that, as banking organizations become involved in trading a wider range of nongovernment securities, it may be desirable to recognize explicitly the different risks inherent in trading account assets that are readily marketable and marked to market on a frequent basis. Thus, the FDIC seeks comment on how the risks associated with trading account assets might be assessed and how such assets might be treated in a risk-based capital framework.

The inclusion in the 25 percent risk category of *local currency claims* on foreign central governments *to the extent* a bank has local currency liabilities in the foreign country recognizes that such claims do not involve transfer risk. All other claims on foreign governments are assigned to the 100 percent risk category.

Category IV—50 Percent Weight. This category includes assets that are considered to have more credit risk than the assets categorized above, but generally less credit risk than the standard commercial bank loan portfolio. This category includes claims on U.S. Government-sponsored agencies, that is, agencies originally established or chartered by the federal government to serve public purposes specified by the U.S. Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the U.S. Government." [11] It also includes claims fully collateralized by U.S. Government-sponsored agency debt and direct claims on multinational development banks in which the U.S Government is a shareholder or contributing member. The latter would include, among other institutions, the World Bank and the Inter-American Development Bank. The 50 percent risk category also includes general obligation claims on domestic state and local governments.

If a claim is secured by two forms of collateral that are recognized explicitly in the proposal but placed in different risk categories, such as U.S. Government debt and U.S. Government-sponsored agency debt, the claim would be assigned to the higher of the two risk categories, provided that the claim is fully collateralized. Any claim that is not fully secured, based upon current market value, would be placed in the risk category appropriate for an unsecured claim to the obligor.

Category V—Standard Risk—100 Percent Weight. All assets not included in the categories mentioned above are to be assigned to the 100 percent standard risk category. If it appears that a claim could be assigned to more than one category, for example, a long-term claim on a bank (100 percent) secured by U.S. Government debt (25 percent), the claim should be assigned to the lower of the two risk categories and should not be included in the higher category. The bulk of the assets typically found in a bank's loan portfolio would be assigned to the 100 percent category. Such assets include: long-term claims on domestic depository institutions and foreign banks; all other claims on foreign central governments, including local currency claims on foreign central governments that exceed local currency liabilities in that foreign country (i.e., claims on foreign governments that entail transfer risk); and all other assets, including commercial and industrial loans and lease financing receivables, residential real estate and consumer loans, corporate securities and commercial paper, all other claims on foreign private obligors, investments in fixed assets, bank premises, and other real estate owned. This category also includes loans to nondepository financial institutions, such as insurance companies, mortgage companies, and finance companies, as well as loans to depository and nondepository financial institution holding companies, including bank holding companies. The 100 percent risk category also includes domestic tax-exempt state and local government revenue and industrial development bonds.

Off-Balance Sheet Items—The FDIC's February 1986 proposal assigned both assets and certain off-balance sheet items directly to an appropriate risk category. By contrast, this proposal follows the treatment outlined in the proposed U.S./U.K. Agreement, which provides for a two-step credit equivalent approach to determining off-balance sheet risk. The face amount of an off-balance sheet item is multiplied by a credit conversion factor (see Table 2 in Appendix A) and the resulting amount is assigned to an appropriate risk category depending upon the identity of the obligor and, in certain cases, on the maturity of the instrument.[12] The FDIC believes that the proposed credit equivalent approach provides supervisors greater flexibility for factoring future off-balance sheet instruments into a risk-based capital calculation.

Direct Credit Substitutes. The proposed U.S./U.K. Agreement applies a 100 percent conversion factor to direct credit substitutes, defined to include financial guarantees and standby letters of credit backing outstanding financial claims of the account party. These direct credit substitutes would include standby letters of credit, or other equivalent irrevocable obligations or surety arrangements, that back or guarantee repayment of commercial paper, tax-exempt securities, or other commercial or individual loans or debt obligations. In addition, sale and repurchase agreements and asset sales with recourse (to the extent not already included on a financial institution's balance sheet) are converted at 100 percent of their face amount.[13] Conversion of these items at the 100 percent level reflects the view that the credit risk associated with these items is broadly equivalent to the risks associated with on-balance sheet items. By issuing such instruments, a bank has the same credit risk with respect to a customer that it would have if it made a direct extension of credit to the customer. This treatment of standby letters of credit is also consistent with the fact that such exposures (1) are generally covered by statutory limits on loans to a single borrower, (2) warrant the same credit approval process as traditional loans, and (3) are treated and analyzed like loans by bank examiners and supervisors.

Trade-Related Contingencies. The Agreement proposes that trade-related contingencies be converted at 50 percent. Such trade-related contingencies include commercial letters of credit and performance standby letters of credit. The latter includes obligations backing the performance of nonfinancial or commercial contracts or undertakings. To the extent permitted by law or regulation, performance standby letters of credit would include arrangements backing, among other things, subcontractor's and supplier's performance, labor and materials contracts and construction bids. The

[11] Examples of U.S. Government-sponsored agencies include the Banks for Cooperatives, the Federal Intermediate Credit Banks (FICB), the Federal Land Banks (FLB), the Federal Home Loan Banks (FHLB), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), and the Student Loan Marketing Association.

[12] Credit equivalent amounts of off-balance items that are secured by recognized collateral (that is, cash or debt of the U.S. Government, Government agencies or government-sponsored agencies) are assigned, as with on-balance sheet exposures, to the appropriate risk category based upon the nature of the collateral.

[13] A bank's purchases of risk participations in bankers acceptances are also included and converted at 100 percent and assigned to the appropriate category depending upon the identity of the account party

conversion of trade-related contingencies at the 50 percent level is based on the view that the counterparty involved in such contingencies has a strong incentive to meet its obligations if it wishes to continue to conduct its day-to-day business. Moreover, such contingent obligations are often short-term in nature, and the losses incurred by banks as a result of such trade-related contingencies are believed to be lower than those incurred as a result of direct credit substitute contingencies.

Other Commitments. The credit conversion factors proposed for other commitments, including overdraft facilities, revolving credit facilities, note issuance facilities, and commercial and consumer commitments are tied to the *original* maturity of the commitment. Maturity in this regard is defined by the earliest possible point in time that the bank can, at its option, *unconditionally* cancel its commitment to a borrower. Under this risk based capital proposal, maturity is generally not a factor in assigning loans to risk categories because once a direct loan has been made, the funds are disbursed to the borrower, the bank is fully exposed for the amount of the loan, and deterioration of a loan with a short-term stated maturity can, nonetheless, result in a long-term exposure for the lender. However, with respect to a loan commitment, the longer the term of the commitment, the greater the potential risk exposure since there is an increased likelihood that the borrower's financial circumstances or condition may change during the period the commitment is outstanding. Thus, under this risk-based capital proposal, commitments with an original maturity of one year or less would be converted at 10 percent; those with an original maturity of over one year and up to and including five years would be converted at 25 percent, and those with an original maturity of more than five years would be converted at 50 percent.

The FDIC's February 1986 proposal aggregated commitments and assigned them directly to the 30 percent risk category. Thus, this proposal places a lower weight on short- and intermediate-term commitments and a higher weight on long-term commitments than those set forth in the February 1986 proposal. In addition, the February 1986 proposal did not explicitly include in the risk categories commitments in the form of credit card and consumer commitments, which include home equity lines and mortgage commitments, as this proposal does. The FDIC is seeking comment on the proposed definition and treatment of commitments, particularly the inclusion of commitments to consumers in the form of credit card lines, home equity lines and mortgage commitments.

Commitments, for risk-based capital purposes, are defined as any arrangements that legally obligate a banking organization to purchase loans or securities, or extend credit in the form of loans or leases, participations in loans and leases, overdraft facilities, revolving credit or underwriting facilities, or similar transactions. Generally, commitments involve a written contract or agreement, or a commitment fee or some other form of consideration. For the purpose of calculating the risk asset ratio, the definition includes commitments that obligate the banking organization to extend credit to consumers or individuals in the form of retail credit cards, check credit and overdraft facilities, home equity and mortgage lines, and other similar arrangements.

Commitments are to be included in the risk asset ratio regardless of whether or not they contain "material adverse change" escape clauses or other provisions that are intended to relieve the bank of its funding obligation under certain conditions. However, lending arrangements that are unconditionally cancelable at any time at the option of the bank would not be deemed to be commitments for risk asset purposes, *provided that* the bank, in fact, makes an individual credit judgment based upon the borrower's current financial condition before *each* draw under the lending facility. Arrangements under which a banking organization agrees to extend credit for a specified period, even if unconditionally cancelable at any time, would constitute commitments if the bank does not make an individual judgment based upon the borrower s financial condition at the time each extension of credit or draw under the lending facility is granted.

Commitments with material adverse change escape clauses are included because such commitments may involve risk if a bank funds the commitment *before* the customer's condition deteriorates, or before the deterioration is recognized. Moreover, while the FDIC does not wish to discourage the use of material adverse change clauses, recent court decisions suggest that the presence of a material adverse change clause cannot necessarily be relied on in all cases to relieve a bank of its obligations pursuant to a commitment.

In the case of commitments structured as syndications, the risk asset framework includes only the banking organization's proportional share of such commitments. In addition, only the unused portion of commitments are treated as off-balance sheet items. Amounts that are already drawn and outstanding under a commitment appear on the balance sheet and such amounts, therefore, should not be included as commitments for purposes of computing the risk asset ratio.

The definition of the maturity of commitments in connection with revolving credit facilities raises a number of questions. Such arrangements typically entail (1) a commitment period during which the borrower has access to a revolving credit facility, and (2) conversion of the outstanding balance to a term loan at a specified future date. Thus, the maturity of such commitments could be defined in terms of the duration of the revolving credit facility only, or in terms of the combined period of the revolving credit facility and the term loan. The FDIC seeks public comment on the appropriate manner by which to define the maturity of these types of commitments, as well as on the broader issue of the definition of commitments incorporated in this proposal.

Administration of a Risk-Based Capital Measure

The proposed risk-based capital ratio would be *only one* of many considerations that would be evaluated in the assessment of capital adequacy. The FDIC wishes to emphasize that the introduction of a risk-based capital ratio would in no way lessen the need for supervisors and examiners to make judgments on capital adequacy—judgments which reflect a broad mix of qualitative and quantitative considerations.

The proposed U.S./U.K. Agreement upon which the FDIC's proposal is based provides that banking authorities will, over time, *place more emphasis* on the risk-based capital ratio. However, the Agreement leaves each banking agency free to use other capital ratios in assessing capital adequacy. In this regard, the FDIC intends to at least initially use the risk-based capital ratio in *tandem* with current capital to total assets ratios. In this regard, the FDIC proposes to adopt the risk-based capital proposal as a *policy statement* rather than as a regulation and to maintain the basic structure of the existing Part 325 capital maintenance regulation. This means that individual banking organizations would still be subject to an overall constraint on total leverage, although the revised definition of primary capital proposed in the risk-based capital measure would apply to the Part 325 leverage limitation as well

as to the risk-based capital ratio. In effect, the proposed risk-based capital ratio would be used as an additional capital measure designed to encourage banking organizations to make appropriate adjustments in either the risk composition of their portfolios or their overall level of primary capital.

Under the tandem operation of the risk-based capital and the capital to total assets (leverage) ratios, banking organizations in strong financial condition and with risk-based capital ratios well above the risk-based minimum might be allowed to *reduce* their ratios of primary capital to total assets (that is, increase their leverage) to the figures closer to the existing 5.5 percent and 6.0 percent minimums that are set forth in the FDIC's Part 325 capital maintenance regulation. This would be permitted only to the extent that the banking organizations did not face significant risks not explicitly factored into the risk-based capital framework, such as sizable loan concentrations, excessive problem loans or classified assets, significant interest rate risk exposure, or other financial, managerial or operational deficiencies (including any that may arise from trust department operations), and only to the extent that such reductions in ratios of primary capital to total assets were carried out in a manner consistent with sound banking practices. The total *leverage constraints* set forth in Part 325 of the FDIC's regulations *would continue* to be in place and banking organizations would not be permitted to reduce their capital to total assets ratios below those supervisory minimums.

The use of the risk-based capital ratio in tandem with existing supervisory capital requirements would not result in inconsistent or conflicting supervisory treatment, since most banking organizations have capital to total assets ratios above the current Part 325 minimums. Thus, the proposed risk-based capital ratio and the current supervisory capital requirements would *complement* each other by providing a framework for analyzing capital in relation to risk as well as to overall leverage. As experience is gained in the application of the risk-based ratio, the FDIC may consider whether the existing capital to total assets ratios should be reduced, phased out or eliminated. In this regard, the FDIC seeks public comment on whether, in the long run, some form of total leverage constraints should be retained and what factors should be considered in making this determination.

As is the case under the FDIC's current Part 325 capital maintenance regulation, this proposal envisions that risk-based capital ratios would be calculated for *all* state nonmember banks on a consolidated basis. The risk asset framework would be employed to evaluate the capital of all state nonmember banks *regardless of size* since the rationale for relating capital needs to risk profiles applies to both large and small institutions.

This proposed U.S./U.K. Agreement indicates the intention to establish for U.S. and U.K. banking organizations a *minimum ratio* of adjusted primary capita to total assets weighted for risk. However, as stated in the proposed Agreement, most banking institutions would generally be expected to operate above the minimum acceptable risk-based capital ratio. Supervisors would still be able to establish risk-based capital ratios above the minimum standard for individual banking institutions.

The proposed U.S./U.K. Agreement does not specify the actual minimum acceptable ratio that might be adopted. However, based on the proposed definitions and framework of this proposal, preliminary estimates using available information indicate that a minimum risk-based capital ratio might possibly be established somewhere within the 5 to 7 percent range. Therefore, respondents are encouraged to consider the interrelationships between the primary capital definition, the risk weights, and the risk-based capital ratio when formulating responses to this proposal

Banking organizations will be able to comply with the risk-based capital measure in several ways, some of which do not require raising new external capital. For example, an organization can moderate its growth and/or increase its earnings retention. More importantly, however, within a risk-sensitive capital framework, an organization can raise its capital ratio by *reducing* its *risk profile*. This could be done by reducing off-balance sheet risk or by placing proportionately greater emphasis on those balance sheet activities that carry lower risk weights.

Issues for Further Consideration

Since the issuance of the FDIC's supplemental adjusted capital proposal in February 1986, the FDIC has received substantial public comment on the proposal and the concept of a risk-adjusted capital measure in general. The FDIC's staff has worked with the staffs of the FRS and OCC to maintain uniform capital standards for all federally supervised banking organizations in the United States. In addition, the staffs of the FDIC, FRS and OCC have coordinated with the staff of the Bank of England to reach a tentative agreement that provides the basis for this revised proposal. Nevertheless, significant questions remain and the FDIC is seeking comments in the specific areas described below.

(1) The U.S./U.K. Agreement upon which the FDIC's proposal is based provides that banking authorities will emphasize the risk-based capital ratio. However, the Agreement leaves each banking agency free to use other capital ratios in assessing capital adequacy. In this regard, the FDIC proposes to use the risk-adjusted capital ratio in *tandem* with current capital ratios. The FDIC seeks comment on whether the risk-based capital ratio should eventually replace the existing capital to total assets ratios. Stated differently, should some form of total leverage constraint be retained? What factors should be considered in making this determination? In addition, should the proposed redefinition of primary capital apply, as is now proposed, to the FDIC's current Part 325 capital maintenance regulation as well as to a risk-based capital measure, or should the proposed redefinition apply only to the proposed risk-adjusted capital measure? Furthermore, should the risk-based capital framework be incorporated into the existing Part 325 capital maintenance *regulation* or included within a less formal *policy statement?*

(2) While the proposed U.S./U.K. Agreement focuses on primary capital, it indicates that the regulatory authorities will consider other measures of capital adequacy. In addition to the FDIC s proposed ratio of primary capital to weighted risk assets, should the FDIC establish a minimum ratio of *total* capital (defined as primary capital plus secondary capital) to weighted risk assets for state nonmember banks?

(3) The U.S /U.K. Agreement proposed capital requirements for *commitments*, including commitments to extend credit to consumers, such as credit card lines, home equity lines of credit, and mortgage commitments. How should commitments be defined for risk-based capital purposes? Should different credit conversion factors be assigned to commitments on the basis of original maturity? Should the FDIC consider commitments to consumers to be different, in terms of effective risk exposure, from commitments to commercial borrowers? What is the most appropriate way to treat commitments to consumers in light of the supervisory objective of relating capital to risks undertaken by banks?

(4) Adoption of the proposed U.S./U.K. Agreement would modify the criteria for including certain noncommon equity instruments in primary capital. Are the criteria for defining limited forms of primary capital and the limitations that apply to these instruments reasonable? Are the criteria consistent with the concepts of loss absorption capacity and permanence, two major characteristics that determine the quality of capital instruments? How will such criteria affect the ability of organizations to raise primary capital in the form of *preferred stock* and *perpetual debt?* What is the most appropriate way to discount 25-year limited-life preferred stock for prudential purposes as it approaches maturity?

(5) The proposed U.S./U.K. Agreement defines primary capital to include *general reserves* for loan losses (that is, the valuation reserve for losses on loans and leases). The proposal also states, however, that specific reserves for identified losses should not be included in primary capital since such reserves are not generally available to absorb estimated, but unidentified, losses. Given the practical difficulty of distinguishing between specific and general reserves, the proposed Agreement provides that the banking aqencies will seek comment on whether loan loss reserves should be phased out of primary capital. Valuation reserves have historically been included in U.S. bank capital ratios because they are deemed available to absorb estimated (but not identified) losses inherent in the loan portfolio. However, it could be argued that such reserves should be excluded from primary capital to the extent that such reserves actually reflect known or identified losses, or to the extent that banks are reluctant to charge off loans because such actions would reduce their primary capital ratios This argument reflects the view that the capital base exists to absorb unidentified losses and should not be inflated by the presence of a high volume of known or identified problem loans. Should valuation reserves, such as the allowance for losses on loans and leases, be excluded from primary capital or should they be retained as a component of primary capital? Alternatively, should valuation reserves be phased out of primary capital over a specified time frame? If retained as a component of capital, should valuation reserves be limited in relation to other components of primary capital?

(6) The proposed Agreement provides that *intangible assets* be deducted from primary capital for the purposes of calculating the risk-based capital ratio, but proposes to grandfather intangibles acquired before the final adoption of the risk-based capital framework. Two approaches to grandfathering are possible. One, intangibles could be grandfathered for their useful lives; or, two, they could be grandfathered for a specific period, such as 10 years, if this term is shorter than the useful lives of the intangible assets. By what method should the FDIC grandfather intangibles for purposes of deducting intangible assets from capital when calculating the FDIC s proposed risk-based capital ratio?

(7) Should risk-based capital ratios be calculated from *period-end* or *average* data?

(8) The FDIC's revised proposal establishes new criteria for the inclusion of *debt instruments* in primary capital that are essentially similar to those incorporated in the Federal Reserve Board's existing definition of perpetual debt. Any debt instrument meeting these criteria, so long as the debt instrument does not contain other provisions inconsistent with safe and sound banking practices, would qualify as primary capital under the conditions set forth in the proposed U.S./U.K. Agreement on which the FDIC's revised proposal is based. The FDIC seeks comment on whether the criteria proposed for the inclusion of debt instruments as primary capital are appropriate, or whether criteria other than those proposed would be preferable In addition, what method should be used for grandfathering existing mandatory convertible securities that qualify as primary capital under the current Part 325 capital maintenance regulation but that would not qualify as primary capital under the proposed risk-based ratio?

(9) Should the risks associated with *trading account assets* be incorporated explicitly into the risk-based capital ratio, and, if so, how might this be done? What would be the rationale in terms of risk exposure for assigning trading account assets a different weight than the weight assigned to the same assets held for investment purposes? If assets held in trading accounts are to be given a different weight than if they are held as investments, how should trading account assets be specifically defined to distinguish them from assets held for investment purposes?

(10) As the footnote in the proposed U.S /U.K. Agreement indicates, the FDIC and the OCC support the inclusion of all *direct claims* on the *U.S. Government* in the same 10 percent risk category, regardless of remaining maturity. In contrast to this proposal, the Federal Reserve has proposed to assign risk weights of 10 percent to short-term (one year or less) direct claims on the U.S. Government and 25 percent to long-term claims, thereby reflecting an additional risk adjustment for long-term securities to cover potential interest rate risk. The FDIC believes that making a maturity distinction among claims on the U.S. Government is not a meaningful way of incorporating interest rate risk. Therefore, until a more systematic interest rate risk framework is developed, the FDIC believes all claims on the U.S. Government should be placed in the same risk category, regardless of maturity. In view of the above, the FDIC seeks comment on the appropriate risk weighting for claims on the U.S. Government. In addition, should remaining maturity be a factor in this determination?

(11) The potential risks relating to *trust department* operations have not been explicitly included in the risk-based capital proposal. However, certain state nonmember banks have very significant trust department operations in relation to their commercial banking activities In some cases, the institutions are, in substance, insured trust companies that provide only incidental banking services As a result, most of the risks associated with those banks activities are fiduciary in nature and relate to the managing of trust department assets. These assets are not reported on the banks' consolidated Reports of Condition and are therefore not subject to any explicit capital requirement Should explicit capital requirements be assigned to trust department activity? If so, should capital requirements be applied to all accounts under management or just those accounts over which the bank has discretionary powers? If a capital requirement is imposed, should it be based on a percentage of the market value of trust department assets, or should capital requirements be determined on some other basis? In this regard, a recent application by a trust company for FDIC deposit insurance resulted in a commitment by the trust company to maintain 75 basis points of capital for each $100 of discretionary trust assets. If capital should be applied to significant trust department activities, at what point does the size of trust department operations become significant enough in relation to the commercial bank asset size to warrant the imposition of capital requirements for the risks associated with such fiduciary activities?

Regulatory Flexibility Act Analysis

The FDIC does not believe that adoption of this proposal would have a significant economic impact on a substantial number of small business entities, in this case small state nonmember banks, within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Although state nonmember banks would presumably be required to revise certain of their reporting procedures to permit quarterly tracking of risk-based capital ratios, this proposal is designed primarily to take account of those practices, such as the increased use of off-balance sheet risk and the decline in the holdings of low-risk, liquid assets, that have been engaged in primarily by certain larger banking organizations. Moreover, rather than requiring all banking organizations to raise additional capital across the board, this proposal is directed at institutions whose capital positions are less than fully adequate in relation to their risk profiles. While some additional reporting requirements would be imposed by this proposal, the FDIC will attempt to minimize the additional requirements, to use existing forms and collected data where possible, and to eliminate or reduce existing reporting requirements to offset to the extent possible any additional reporting burden.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, State nonmember banks.

Appendix A

Note.—Appendix A will not appear in the Code of Federal Regulations.

Table 1.—Summary of Risk Weights and Major Risk Categories for State Nonmember Banks

0 percent

Cash—domestic and foreign
Claims on Federal Reserve Banks

10 percent

Claims on the U.S. Government and its Agencies

25 percent

Cash items in process of collection
Short-term claims on domestic depository institutions and foreign banks, including foreign central banks
Claims (including repurchase agreements) fully collateralized by cash or U.S. Government or Agency debt
Claims (or portions thereof) guaranteed by the U.S. Government or its Agencies
Local currency claims on foreign central governments to the extent that the bank has local currency liabilities in that foreign country
Federal Reserve Bank stock

50 percent

Claims on U.S. Government-sponsored Agencies
Claims (including repurchase agreements) fully collateralized by U.S. Government-sponsored Agency debt
General obligation claims on states, counties and municipalities
Claims on multinational development institutions in which the U.S. is a shareholder or contributing member

100 percent

All other assets not specified above, including:
Claims on private entities and individuals, including commercial, consumer and real estate loans
Long-term claims on domestic and foreign banks
All other claims on foreign governments and private obligors
Industrial development bonds and other revenue bonds issued by states, counties, and municipalities
Bank premises, fixed assets and other real estate owned

Table 2.—Summary of Off-Balance Sheet Items and Conversion Factors for State Nonmember Banks

Direct credit substitutes (financial guarantees and standby letters of credit serving the same purpose)—*100 percent* credit conversion factor.

Trade-related contingencies (commercial letters of credit, bid and performance bonds and performance standby letters of credit)—*50 percent* credit conversion factor.

Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet—*100 percent* credit conversion factor.

Other commitments, including overdraft facilities, revolving underwriting facilities (RUFs/NIFs), underwriting commitments, commercial and consumer credit lines. The credit conversion factors are:

10 percent—one year and less original maturity.[1]

25 percent—over one to five years original maturity.

50 percent—over five years original maturity.

Credit conversion factor to be determined

Interest rate swaps and other interest rate contracts.

Foreign exchange rate contracts.

[1] Maturity is defined as the stated maturity date or the earliest possible time at which the bank may *unconditionally* cancel the commitment, whichever occurs first.

Table 3

The following table illustrates the calculation of the risk-based capital ratio, as proposed in the U.S./U.K. Agreement. This example assumes a banking organization with $100,000 in total assets, $50,000 in certain off-balance sheet credit equivalent amounts, and $7,000 in adjusted primary capital as defined by the proposal.

Risk category	On-balance sheet and credit equivalent amounts		Risk weight		Weighted risk assets and off-balance sheet items
0 percent	$5,000	×	0	=	0
10 percent	10,000	×	0.10	=	$1,000
25 percent	30,000	×	0.25	=	7,500
50 percent	20,000	×	0.50	=	10,000
100 percent	85,000	×	1.00	=	85,000
Total (including $100,000 in total assets and $50,000 in credit equivalent off-balance sheet items, as derived from Table 4)	150,000				103,500

Adjusted primary capital—$7,000.
Risk-based capital ratio (as proposed) 7,000/$103,500=6.8%.

Table 4

The following table illustrates the calculation of the "credit equivalent" value of selected off-balance sheet items by multiplying the principal amount by the appropriate "credit conversion factor." Each credit equivalent value would subsequently be assigned to one of the five risk categories (See Table 3) depending on the identity of the obligor.

Off-balance sheet item	Principal amount		Credit conversion factor		On-balance sheet credit equivalent amount
Standby letter of credit (financial guarantee)	$40,000	×	1.00	=	$40,000
Commitment with original maturity of three years	20,000	×	0.25	=	5,000
Commercial letter of credit	10,000	×	0.50	=	5,000
Total	70,000				50,000

Appendix B

Note.—Appendix B will not appear in the Code of Federal Regulations.

(The following U.S/U.K. proposed Agreement was jointly released by the U.S. and U.K. bank supervisory authorities on January 8, 1987.)

Agreed Proposal of the United States Federal Banking Supervisory Authorities and the Bank of England on Primary Capital and Capital Adequacy Assessment

This paper constitutes a system for the measurement of capital adequacy agreed by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation and the Bank of England. The principal objective of the paper is to promote the convergence of supervisory policies on capital adequacy assessments among countries with major banking centers. The proposal outlined below is intended to serve as a basis for consultation with the banking industry and others in the United States and the United Kingdom. The authorities concerned hope that the approach adopted by the United States and the United Kingdom will provide a basis which other countries can follow.

This paper explains the agreed proposal concerning:

(I) The components of the primary capital base of banking organizations;

(II) The deductions to be made from primary capital in computing the capital base for the calculation of a risk asset ratio;

(III) The weighting structure of risk assets and off-balance sheet activities; and

(IV) The use for supervisory purposes of a ratio of primary capital to weighted risk assets.

The paper should be read in conjunction with the attached tables which are appropriately cross-referenced.

I. Primary Capital

Primary capital represents the highest quality form of capital for banks and banking organizations (hereinafter a reference to banks should generally be taken to include banks, bank holding companies in the United States and banking groups in the United Kingdom). Within this category of capital, quality cannot be regarded as uniform and some components are undoubtedly of a higher quality than others. There are a number of elements that strengthen the balance sheets of banks to some extent, although clearly falling short of primary capital. Into this latter category may fall subordinated debt with a fixed maturity and the excess of market value over book value of some bank assets, notably bank premises and long-term investments. It is not the intention of the supervisors to ignore these items but rather to take some account of them after the basic primary capital to weighted risk asset ratio has been calculated. The supervisory authorities in both countries will therefore also take account of the ratio of total capital to weighted risk assets, as well as other qualitative factors, in their overall prudential assessment.

The components of the primary capital base represent resources which can be used to meet current losses while leaving banks able to continue operating on a going concern basis. The supervisors agree that this criterion is the most important determinant of the status of primary capital.

Common stock/equity (IA1), although repayable in strictly defined and limited circumstances, clearly meets the criterion as does any premium or surplus arising from the issue of common stock/equity. These, together with reserves in the form of *retained earnings* (IA2), represent the highest quality form of capital. *The minority interest in subsidiaries that are consolidated for supervisory purposes* (IA3) is also available to absorb losses.

There are no limits on the amounts of such capital that can be included in a bank's capital base for purposes of measuring capital adequacy. While it could be argued on grounds of uncertainty that it would be desirable to defer inclusion of *current year earnings* (IA2) until the end of the year in question, the U.S. and U.K. supervisory authorities have decided to include them. A realized profit arising out of the disposal of real property, for example, clearly fully meets the criterion for inclusion in primary capital.

It is, however, possible that lending or trading profits for interim periods during the year may be eroded by later or unidentified losses.

General reserves/general provisions (IA4) for losses resulting from charges to earnings will be included for the present in primary capital. The U.S. and U.K. supervisory authorities are agreed that provisions made against identified losses cannot and should not be regarded as capital. General reserves/general provisions are made against unidentified or potential losses and can therefore be regarded as meeting the criterion. The U.S. and U.K. supervisory authorities have reservations about those general provisions that in reality are earmarked against specific assets or categories of assets and that do not therefore satisfy the criterion of general availability. However, it is not always possible to distinguish such provisions. Therefore, while for the present all general reserves/general provisions are included as primary capital, the supervisory authorities would like to seek comment from banks, the accounting profession and other interested parties on whether such reserves should be phased out of the primary capital base.

Hidden reserves (IA5), in the form of undisclosed retained earnings, do not exist in the United States and presently are permitted only to a limited number of banks in the United Kingdom. The issue has been addressed in the European Community's Bank Accounts Directive and, within its terms, member states have the option to allow banks in their country to maintain limited hidden reserves. This option will be reviewed five years after the Directive has been implemented. The position of hidden reserves in the United Kingdom will therefore next be considered when the Bank Accounts Directive is implemented. If it is then decided that U.K. banks should not be permitted to maintain hidden reserves, they will be available for transfer to disclosed reserves. Until this occurs, the Bank of England will continue to include them as primary capital.

In addition to the elements to be allowed without limit, the supervisory authorities propose to include in primary capital, but subject to a limit, certain items that give much greater strength to a bank than subordinated debt of a fixed maturity but that have certain drawbacks as compared with common stock and other unlimited components of the primary capital base.

Perpetual preferred shares (IB1a) and *instruments perpetual in nature and capable of meeting current losses* (IB2), together with *long-term dated (limited-life) preferred shares* (IB1b), will be included in the primary capital base subject to a limit of 50 per cent of the unlimited elements after the deduction of intangible assets. (For example, if the unlimited items total US$100 million and there are intangibles of US$10 million, then there will be a limit of US$45 million applying to qualifying preferred shares and perpetual debt and their equivalents). Perpetual preferred shares and perpetual subordinated debt cannot be redeemed at the option of the holder and any repayment may occur only with the prior consent of the supervisory authorities. Included here are perpetual subordinated debt and certain instruments that can only be converted into primary capital instruments. The proceeds of such instruments effectively remain available to meet current lossss and leave the bank able to continue operating. Long-term dated preferred shares (25 years or more initial maturity) also provide a cushion against current losses. Such shares must be amortized for the purpose of assessing capital adequacy over the last few years of their life.

Since changes are involved in the definition of the capital base, the respective supervisory authorities will continue to include (in the United States) existing mandatory convertible securities which do not meet the new criteria (in the attached

tables at IB2 (a), (b), (c)) and (in the United Kingdom) existing revaluation reserves for bank premises.

II. Deductions From Primary Capital

The U.S. and U.K. supervisors have also agreed to propose that certain deductions should be made from the total of primary capital elements in order to derive the adjusted capital base for purposes of calculating the risk weighted capital ratio. In the United States, all future *intangible assets* will be deducted; existing allowed intangible assets will be "grandfathered." The Bank of England reaffirms its present policy of deducting all existing intangible assets (IIA).

Investments in unconsolidated subsidiaries and associated companies including, but not limited to, unconsolidated joint ventures, will also be deducted (IIB). For the United States, this could include certain consolidated subsidiaries as determined by U.S. regulatory authorities. The assets of such companies will not be brought into the calculation of the risk asset ratio.

The Bank of England already deducts *bank holdings of other banks capital instruments* (IIC), except for limited concessions to allow some banks to play an active role in market-making in the primary (new issues) and/or secondary markets. This policy will be maintained. The U.S. authorities accept the principle underlying this policy and will monitor bank holdings of capital instruments issued by other banks and may, as appropriate, deduct these items on a case-by-case basis.

III. The Risk Asset Ratio

(a) *General.* The risk asset ratio is calculated by applying to each broad category of assets or off-balance sheet obligations a weight reflecting the relative riskiness inherent in each. The total of weighted risk assets is then measured in relation to the adjusted capital base to derive a ratio. The U.S. and U.K. authorities intend to concentrate on the primary capital to total weighted risk asset ratio.

This section describes and explains the simple structure of weights and indicates areas where further work is required to augment the present agreed approach.

It is recognized that it would be possible to establish more weights but this would introduce greater complexity, and more onerous statistical reporting obligations, without any assurance of a significantly more efficient or effective system. The calculation of the ratio represents only one element in the assessment of capital adequacy, although it is a most important one.

The agreed framework consists of broad categories of obligor and, to some extent, of maturity. With certain important exceptions, it reflects credit risk, that is, the risk of borrower or counterparty default. In addition the Bank of England includes the net open foreign exchange position in the risk asset ratio as defined in Foreign Currency Exposure, April 1981. The U.S. authorities are committed to introducing a capital requirement for exchange rate risk. All authorities are firmly committed to the development of an approach that will enable interest rate risk to be incorporated into the framework. Some other risks—for example, of operational failures—are important but cannot readily be captured in a risk asset ratio. The agreed weighting structure takes no account of country transfer risk. Nor is commercial lending differentiated with respect to credit quality or collateral, except for the strictly limited exception for exposures secured by government securities or cash. These factors will be considered, as now, through the examination/supervisory process.

Five risk weight categories are proposed—0 percent, 10 percent, 25 percent, 50 percent and 100 percent—and the weighting for particular items is discussed below. There are some special institutional features of the U.S. and U.K. markets which require differences in treatment between the two countries; these are indicated in the text which follows.

(b) *On-balance sheet.* The weightings set out in what follows are based on relative degree of risk starting from 100 percent for a claim on a non-bank obligor, which can for these purposes be regarded as a standard risk.

(i) *Cash and all claims on the domestic central bank.* Cash and all claims on the domestic central bank (III 1, 2) are regarded as bearing no significant banking risks and therefore are assigned a weight of 0 percent. The Bank of England will also continue to give a 0 percent weight to government-guaranteed export and ship-building loans (III 3). As indicated below, the U.S. supervisory agencies place comparable U.S. Government-guaranteed claims in the 25 percent risk category (III 12).

(ii) *Short-term claims on domestic national government.* Short-term claims (remaining maturity of one year or less) on the domestic national government and on domestic national government agencies (III 4) are assigned a weight of 10 percent. (For the United States, national government agencies are defined as those agencies whose debt obligations are backed by the full faith and credit of the U.S. Government.) While short-term claims on the domestic national government bear no credit risk, such claims could involve a degree of interest rate exposure. Thus, as described below, until a more direct measure of interest rate risk is developed, such claims will be assigned to the 10 percent category.

(iii) *U.K. discount houses, gilt-edged market makers and Stock Exchange money brokers.* The Bank of England proposes a weighting of 10 percent for short-term (remaining maturity of one year or less) claims on discount houses, gilt-edged market makers and Stock Exchange money brokers. These specialist institutions have an operational relationship with the Bank, including secured borrowing facilities, and are subject to close supervision. They trade predominantly in high quality liquid assets on which their borrowing is customarily secured. For these reasons, short-term claims on this group involve less risk than short-term claims on banks. This treatment effectively reflects the special institutional structure in the United Kingdom (III 5).

(iv) *Short-term claims on domestic depository institutions and foreign banks (including foreign central banks).* The weighting for short-term claims (remaining maturity of one year or less) on domestic depository institutions and foreign banks and equivalent off-balance sheet exposures (III 6, 7, 11) reflects the lower risk generally of such claims as compared with claims on commercial obligors and longer term claims on banks. For this reason, a weighting of 25 percent for this category has been proposed. It is acknowledged that short term claims on some commercial borrowers may involve less risk than similar claims on some banks. It is considered, however, that since depository institutions are supervised and a particularly high quality is inherent in short-term-inter bank claims, the treatment proposed is broadly reasonable. Longer-term claims on depository institutions are regarded as bearing a higher risk that is generally closer in quality to claims on commercial obligors and these will be assigned a weight of 100 percent. The breakpoint at one year is admittedly arbitrary but captures most genuine short-term, inter-bank money market activity.

(v) *Longer-term claims on own (domestic) governments and analogous claims.* For U.S. banks, the weighting of long-term claims on the U.S. Government (Treasury), and for U.K. banks, the weighting of long-term claims on HM Government, does not reflect any credit risk but is designed, as a temporary measure, to be a proxy for the significant element of interest rate risk inherent in holdings of longer-term government securities. It is the intention of the U.S. authorities and the Bank of England to develop a more direct measure of interest rate risk. Pending this further work, it has been agreed that government securities with a remaining maturity of more than one year should be weighted at 25 percent (III 9).[1]

[1] The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) disagreed with splitting such securities according to maturity, even as a temporary measure. Optimally, an adjusted capital standard should incorporate an assessment of a bank's exposure to interest rate risk. Specific assets, however, do not necessarily expose a bank to interest rate risk; rather, interest rate risk reflects the relationship within the portfolio between the interest rate structure of assets and liabilities. Isolating a single asset on a bank's balance sheet and making a maturity distinction in order to incorporate interest rate risk into the capital ratio is inappropriate because it fails to take account of the interest rate exposure arising from other loans and securities, off-balance sheet activities, and a bank's liability structure. In the light of this concern, the OCC and FDIC recommended that banks' exposures to interest rate risk be evaluated case by case during examinations, for purposes of assessing capital adequacy, and that all U.S. Treasury securities and agency securities bearing the full faith and credit of the U.S. Government be placed in the 10 percent risk category. The other supervisory authorities agree with the logic that interest rate risk should be addressed on a portfolio, rather than an individual asset, basis but believe that until such risk can be monitored and included in capital adequacy requirements in a more systematic fashion, the proposed maturity split represents a reasonable interim step.

To be consistent with this approach, claims having an analogous nature are also to be weighted at 25 percent. Thus, for U.S. banks, all long-term claims on U.S. Government agencies (III 9), all claims collateralized by U.S. Government and U.S. Government agency debt or cash (III 10) and claims guaranteed by the U.S. Government or its agencies (III 12) will be assigned to the 25 percent category. For U.K. banks, claims collateralized by domestic national government debt or cash (III 10), most domestic national government guaranteed claims (III 12) and claims on U.K. public corporations and the rest of the public sector (III 9) will be weighted at 25 percent.

For U.S. banks, all claims on U.S. Government-*sponsored* agencies (that is, agencies that are chartered or established by the Federal Government to carry out a public purpose as specified by the U.S. Congress and whose debt obligations are not guaranteed by the full faith and credit of the U.S. Government) and all claims collateralized by U.S. Government-sponsored agency debt are assigned to the 50 percent category (III 14, 15).

Although the credit risk attaching to claims on U.K. local authorities is not the same as claims on HM Government, the Bank of England believes that they should be included in the 25 percent category rather than in the 50 percent category (III 8). The U.S. authorities propose placing general obligation claims on domestic state and local governments in the 30 percent category (III 16).

(vi) *Local currency claims on foreign central governments in foreign offices.* The treatment of assets in overseas offices of banks raises difficult conceptual and practical questions. It has been agreed, however, that local currency claims on foreign *central* governments, to the extent funded by local currency liabilities in that country, do not involve any transfer risk. A 25 percent weight will therefore be applied to both short and long-term claims. (III 13)

(vii) *Multinational development institutions.* All direct claims of U.S. banks on multinational development institutions in which the U.S. Government has shareholder or contributing member status and, similarly, all direct claims of U.K. banks on such institutions in which HM Government has the same status will be given a weight of 50 percent. This reflects the generally high quality of claims on such institutions (III 17).

(viii) *Other assets.* All assets not mentioned so far will carry a 100 percent weight (III 18, 19, 20, 21, 22). As discussed earlier, the Bank of England also already applies a weight of 100 percent to the net open foreign exchange position (III 23) and will maintain this. The U.S. authorities are committed to introducing a capital requirement for exchange rate risk.

(c) *Off-Balance Sheet*—(i) *General.* The U.S. and U.K. banking supervisory authorities believe that all off-balance sheet items giving rise to credit risk (and in addition, in time, foreign exchange and interest rate risks) should in principle be included in the risk asset ratio. The obligations should receive the risk asset weighting appropriate to the individual obligor. There is, however, an important and difficult question relating to the size of the exposure that should be weighted.

An approach to off-balance sheet items has been devised that endeavors to convert the credit risk of each instrument into a credit equivalent that can be incorporated into the risk asset framework outlined in this paper. It is recognized that the methodology employed will appear simple and approximate but it provides a logical and consistent basis for the calculation of a ratio that encompasses both on- and off-balance sheet business.

Distinctions are made between contingencies, commitments and interest rate and foreign exchange rate contracts and these are discussed separately.

(ii) *Contingencies/contingent items.* Obligations in the form of financial guarantees and equivalents (for example, standby letters of credit having the character of guarantees and, in the United Kingdom, acceptances) effectively involve from the date of the assumption of the obligation the same degree of credit risk as outstanding loans (III 24). There is no action that the bank can take to avoid the full credit risk. The supervisory authorities, accordingly, believe that these obligations should be regarded as direct credit substitutes and be weighted for their full amount, that is, the credit conversion factor is 100 percent of the principal amount. The risk asset weighting is then determined by the category of the counterparty and, where appropriate, the maturity.

Some contingencies (III 25), notably commercial letters of credit, performance bonds and performance-related standby letters of credit, involve a lesser credit risk. The key elements in this judgment are that the counterparty has a strong incentive to meet its obligations if it wishes to remain in business (thus giving these claims a somewhat higher ranking in the counterparty's list of priorities than some other claims); the obligations are often (but not invariably) short-term in maturity; and banks assert that the loss record is favorable. To make allowance for these favorable factors, it is proposed to scale down the nominal exposure by a credit conversion factor of 50 percent, before the exposure is weighted according to the category of the obligor (and where relevant maturity)—for example, the deemed credit risk equivalent of a commercial letter of credit of US$10 million would be US$5 million which in turn would be weighted according to obligor and, in some cases, maturity.

Contingencies such as indemnities for lost share certificates and bill endorsements will be excluded from the framework as they do not involve a significant credit risk.

(iii) *Commitments.* Whereas contingencies (as described above) involve the immediate assumption of a credit risk, commitments generally represent an undertaking to assume a credit risk in the future. It is recognized that this distinction is somewhat difficult to make at the margin and that it is the nature of the obligation which matters rather than the name given to the facility.

Some transactions, for example, sale and repurchase agreements and asset sales with recourse, may involve balance sheet entries and as such will attract a weighting for the full face value. Any other obligation or transaction effectively involving an immediate credit exposure will be treated as if it were on the balance sheet. Where an obligation or transaction clearly has the same effect as a financial guarantee (as, for example, certain asset sales with recourse) it will be treated as such (III 26).

For all other commitments (III 27), it is proposed to take account of maturity in determining the credit conversion factors. In so doing, maturity to some extent serves as a proxy for instrument-type. The category of exposure here giving rise to the greatest concern is the long-term contract that is equivalent in effect to an insurance arrangement in its underlying nature, most notably revolving underwriting facilities. Even if material adverse change clauses are included—and the supervisory authorities do not wish to take any action which will discourage their use—the reality is that the bank is assuming a long-term obligation to provide credit if other lenders are unwilling to do so. At the other end of the maturity spectrum, it is accepted that commitments reviewable—and unconditionally cancellable—at least annually involve less risk and that the credit conversion factor should be much lower. While a bank is at risk from an increase in credit exposures as a result of a higher than average utilization of undrawn lines, the low credit conversion factor reflects the historical stability of the undrawn amount of these lines.

The conversion factors to be applied to these commitments will, therefore, be set as follows in terms of their *original* maturity (for these purposes maturity is defined as the earliest possible time at which the bank may unconditionally cancel the commitment):

	Percent
One year or less	10
Over one year to five years	25
Over five years	50

For contingencies and commitments, the principal amount is multiplied by the conversion factor and the resulting exposure will carry the appropriate weight for the category of the counterparty (and the maturity).

(iv) *Interest rate and foreign exchange rate related transactions.* It is the firm intention of the U.S. supervisory authorities and the Bank of England to include the credit equivalent exposure on interest rate and foreign exchange rate related transactions in the risk asset ratio as soon as possible (III 28 and 29). The timing of this step is dependent on reaching final agreement on a method of calculating the credit exposure. As with other off-balance sheet transactions, this will involve estimating a deemed credit equivalent for these instruments that would be incorporated in the general framework on an obligor (and, where appropriate, maturity) basis.

IV. Primary Capital to Weighted Risk Asset Ratio

The U.S. and U.K. authorities intend to set and publish an agreed minimum level of this ratio to be applied to all banks supervised by them. In both countries most institutions will be expected to maintain their ratio at a higher level. The precise figure set for individual banks will remain confidential and will be determined in light of each institution's particular circumstances, for example, the quality and diversification of assets, liquidity, management, internal control systems and other relevant factors. These higher levels will be determined as part of the ongoing supervisory process.

I. Components of Primary Capital

A. Funds included *without* limit.

1. Common stock/equity and premium (United Kingdom), surplus (United States).

2. Retained earnings (including current year earnings).

3. Minority interest in consolidated subsidiaries.

4. General reserves for losses resulting from charges to earnings.

5. Hidden reserves (comprising undisclosed retained earnings)—not applicable in United States, to be phased out in United Kingdom.

B. Funds included *with* limits—items included in this category must not exceed 50 percent of the total items included in A above less intangible assets.

1. Preferred shares that:

(a) Do not mature; or

(b) Mature on a fixed date *and* have an original maturity of at least 25 years. (Amount included in primary capital would be discounted for prudential purposes as the instrument approached maturity.)

2. Subordinated debt that:

(a) Can only be converted into primary capital instruments;

(b) Is available at all times to absorb losses; and

(c) Provides that interest payments may be deferred if the issuer does not make a profit in the preceding period and/or pay dividends on common and perpetual preferred stock. This is intended to include perpetual debt.

Note—(a) Existing mandatory convertible securities which do not meet the criteria in IB2 (for U.S. banks) and existing property revaluation reserves (for U.K. banks) are to be "grandfathered."

(b) For bank holding companies in the United States, perpetual debt issued by the parent company need not be subordinated. It must, however, be unsecured.

II. Adjustments to Capital for Prudential Purposes

A. Deduction of all intangible assets. (Existing intangibles currently allowed by U.S. regulatory authorities will be "grandfathered.")

B. Deduction of investments in unconsolidated subsidiaries and associated companies including, but not limited to, unconsolidated joint ventures. For the United States, this could include certain consolidated subsidiaries as determined by U.S. regulatory authorities; for the United Kingdom this also includes related securities companies.

C. Deduction of bank holdings of capital instruments of other banking organizations. (In the United States these would be monitored and deducted on a case-by-case basis.)

III. Category of Risk

Weight Given

0 Percent

1. Vault cash—domestic and foreign.

2. All balances with and claims on domestic central bank.

3. Domestic national government guaranteed export and ship-building loans (United Kingdom only).

10 Percent

4. For the United States, short-term (remaining maturity of one year or less) claims on the U.S. Government (Treasury) and on U.S. Government agencies (for the United States, national government agencies are defined as those agencies whose debt obligations are backed by the full faith and credit of the U.S. Government) For the United Kingdom, short-term (one year or less) claims on the United Kingdom and Northern Ireland Governments.

5. Short-term (one year or less) claims on discount houses, gilt-edged market makers and Stock Exchange money brokers (United Kingdom only).

25 Percent

6. Cash items in process of collection—foreign and domestic.

7. Short-term (one year or less) claims on domestic depository institutions and foreign banks.

8. All claims on domestic local authorities (United Kingdom only).

9. Long term (over one year) claims on domestic national government (including, for the United Kingdom, Northern Ireland) and all long-term claims on domestic national government agencies. For the United Kingdom, this includes all claims on U.K. public corporations and on the rest of the public sector.

10. All claims (including repurchase agreements) fully collateralized by domestic national government debt and (for the United States) debt of U.S. Government agencies. Also all claims collateralized by cash on deposit in the lending institution.

11. Federal Reserve bank stock (United States only).

12. Portions of loans guaranteed by domestic national government or (for the United States) domestic national government agencies.

13. All local currency claims on foreign central governments to the extent funded by local currency liabilities in that foreign country.

50 Percent

14. All claims on domestic national government-sponsored agencies (U.S. Government-sponsored agencies are defined as agencies whose debt obligations are not guaranteed by the full faith and credit of the U.S. Government).

15. All claims (including repurchase agreements) that are fully collateralized by domestic national government-sponsored agency debt (United States only).

16. All general obligation claims on domestic state and local governments (United States only).

17. Claims on multinational development institutions in which the domestic government is a shareholder or contributing member.

100 Percent

18. Long-term (over one year) claims on domestic depository institutions and foreign banks.

19. All claims on foreign governments other than local currency claims on foreign central governments funded by local currency liabilities in that foreign country.

20. The customer liability on acceptances outstanding involving standard risk obligors (United States only).

21. Domestic state and local government revenue bonds and industrial development bonds (United States only).

22. All other assets.

23. Net open position in foreign exchange (United Kingdom only).

Off Balance Sheet Items

The face amount of these items would be multiplied by the credit conversion factors shown below, and the resulting amount would be slotted in the appropriate risk category depending upon the identity of the obligor and the maturity of the instrument where appropriate.

24. "Direct credit substitutes" (financial guarantees and standby letters of credit serving the same purpose and, in the United Kingdom, acceptances outstanding)—100 percent credit conversion factor.

25. "Trading contingencies" (for example, commercial letters of credit, bid and performance bonds and performance standby letters of credit)—50 percent credit conversion factor.

26. Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet—100 percent credit conversion factor.

27. Other commitments, for example overdrafts, revolving underwriting facilities (for example, RUFs/NIFs), underwriting commitments, commercial and consumer credit lines. The credit conversion factors are:

10 percent—one year and less original maturity

25 percent—over one to five years original maturity

50 percent—over five years original maturity.

Credit Conversion Factor to be Determined

28. Interest rate swaps and other interest rate contracts.

29. Foreign exchange rate contracts.

Note—1. Maturity is defined as the earliest possible time at which the bank may unconditionally cancel the commitment.

2. Certain off balance sheet obligations, for example, indemnities for lost share certificates and bill endorsements, or "holders in due course" obligations, would not be included in capital adequacy requirements.

By Order of the Board of Directors, Dated at Washington, DC this 31st day of March 1987.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-7720 Filed 4-8-87; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed Rules.

SUMMARY: The FDIC is proposing to amend its regulations governing the securities activities of subsidiaries of insured nonmember banks and the affiliate relationships of insured nonmember banks with securities companies by: (1) Revising the existing requirement that such subsidiaries and affiliates must use separate offices from the bank that share no common entrance with the bank, (2) deleting the prohibition against such subsidiaries and affiliates sharing a common name or logo with the bank, and (3) establishing certain affirmative disclosure requirements to the effect that investments recommended, offered or sold by or through such subsidiary or affiliate are not FDIC insured deposits, that the subsidiary and affiliate are separate organizations from the bank, and that the obligations of the subsidiary and affiliate are not obligations of the bank and are not guaranteed, warranted, or otherwise supported by the bank.

DATE: Comments must be received by May 11, 1987.

ADDRESS: Send comments to Hoyle L. Robinson, Exeuctive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to, and reviewed in, Room 6108 Monday through Friday between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Senior Attorney, Legal Division, (202-898-3730), 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: In November 1984 the Board of Directors of the FDIC added section 337.4 to Part 337 of its regulations titled "Unsafe and Unsound Banking Practices" (12 CFR 337) (49 FR 46709, November 28, 1984). Section 337.4 governs certain securities activities of subsidiaries of insured nonmember banks as well as affiliate relationships between insured nonmember banks and certain types of securities companies. The regulation was adopted as a result of a rulemaking procedure initiated in 1982 after the Board of Directors issued a policy statement concerning the applicability of the Glass-Steagall Act (12 U.S.C. 24 (Seventh), 78, 377 and 378) to affiliates and subsidiaries of insured nonmember banks. (47 FR 38984, September 3, 1982). The policy statement concluded that the Glass-Steagall Act does not prohibit insured nonmember banks from being affiliated with securities companies or from establishing or acquiring a securities subsidiary. Inasmuch as it was also the Board of Directors' conclusion that certain indirect securities activities could pose safety and soundness and other concerns if unregulated, the FDIC sought comment on the need to adopt regulations governing such activities. The FDIC issued an advance notice of proposed rulemaking in 1982 (47 FR 42141), a proposed regulation in 1983 (48 FR 22155), and a revised proposed regulation in 1984 (49 FR 18497). The final regulation became effective on December 28, 1984.

In general the regulation was designed to protect bank safety and soundness, to ensure the legal separateness of a bank from its securities subsidiary or affiliate, and to prevent possible confusion on the part of the public which could give rise to claims against the deposit insurance fund and/or claims against the FDIC as receiver of a closed bank. The FDIC sought to achieve these ends by, among other things: (1) Prohibiting the use by an insured nonmember bank of a common name or logo with its securities subsidiary or affiliate if that subsidiary or affiliate engages in securities activities prohibited to the bank by the Glass-Steagall Act, and (2) requiring that an insured nonmember bank be physically separate and distinct in its operations from the operations of such a securities subsidiary or affiliate, this separation to be achieved by separate offices clearly identified as belonging to the subsidiary or affiliate that share no common entrance with the bank except for a common outer lobby or common corridor. (Insured nonmember banks that had become affiliated with a securities company prior to December 28, 1984, or which prior to that date established or acquired a securities subsidiary, were given until December 28, 1985 to comply with these provisions of the regulation.)

In December 1985 the FDIC received two petitions requesting that the FDIC reconsider the prohibition on the use of a common name or logo by a bank and its securities affiliate. The petitions were filed by Merrill Lynch Bank & Trust, Princeton, New Jersey and Prudential Bank & Trust, Atlanta, Georgia. Both petitioners became affiliated with a securities company prior to December 28, 1984. Prudential Bank & Trust was acquired by a company which was also affiliated with a securities firm and Merrill Lynch Bank & Trust (whose parent also owns a securities company) was formed as a newly incorporated bank. A third petition requesting that the FDIC reconsider the separate office/separate entrance requirement for a bank's subsidiary was filed by Washington Mutual Savings Bank, Seattle, Washington. Washington Mutual Savings Bank acquired a securities subsidiary prior to December 28, 1984. The FDIC subsequently received several letters from other insured nonmember banks which supported the petitions. In order to afford the FDIC sufficient opportunity to study the petitions, the Board of Directors extended the December 28, 1985 compliance deadline with the separate office/separate entrance and name provisions of the regulation for preexisting affiliate and subsidiary relationships until June 30, 1986. (51 FR 880, January 9, 1986).

At its June 16, 1986 Board of Directors meeting the FDIC's Board of Directors voted to grant the petitioners' request for reconsideration and to solicit comment on whether or not to retain, or modify in some manner, the prohibition on the use of a common name or logo and the separate office/separate entrance requirement. The Board of Directors also voted to extend the June 30, 1986 compliance deadline with these provisions to December 31, 1986 for institutions with affiliate and/or subsidiary relationships that predated the effective date of the regulation. (51 FR 23405, June 27, 1986). The compliance deadline was subsequently extended until June 30, 1987. (51 FR 45755, December 22, 1986).

The FDIC's request for comment with respect to the common name and logo and separate office/separate entrance requirement was published in the **Federal Register** on August 20, 1986 for a sixty-day comment period which closed on October 20, 1986. (51 FR 29658, August 20, 1986). In publishing the request for comments the Board of Directors indicated that it felt it was appropriate to solicit comment on these restrictions not only in view of the

issues raised by the petitions but in view of the passage of nearly two years since the FDIC last sought comment on, and considered the propriety of, the common name and logo prohibition and the separate office/separate entrance requirement.

The FDIC received 38 comments in response to the August 1986 publication. A summary of those comments is set forth below.

Overall Comment Summary

Of the 38 comments, 7 urged the FDIC to make no changes in either the common name prohibition or the separate office requirement. In brief, these commentors expressed the opinion that: (1) The use of a common name or logo by a bank and its securities subsidiary or affiliate and the sharing of office space by a bank and its securities subsidiary or affiliate is deceptive and blurs the deposit insurance issue, (2) disclosure is not sufficient to avoid depositor confusion, and (3) deleting the existing restrictions would only serve to encourage the proliferation of nonbank banks, the existence of which poses unfair competition to full service banks.

The remaining 31 comments unanimously agreed that the FDIC should eliminate the prohibition on the use of a common name or logo. Most of these comments in turn recommended that, if the FDIC still has concerns about public confusion, a disclosure requirement could be adopted. The disclosure suggestions included: (1) Prohibiting a subsidiary or affiliate from advertising or in any way indicating that the bank and the subsidiary or affiliate are the same entity, (2) requiring that the products sold by the subsidiary or affiliate bear on their face a deposit insurance disclaimer, (3) requiring specific affirmative, periodic disclosures that the subsidiary, the affiliate, and the bank are separate organizations and that the products sold by the subsidiary or affiliate are not insured deposits, (4) requiring that the subsidiary or affiliate provide customers with a written deposit insurance disclaimer at the inception of the customer relationship, and (5) prohibiting any misleading holding-out by the bank, its subsidiary, or affiliate.

The disclosure approach was urged as a more effective means than the common name prohibition of achieving the FDIC's goals as well as one that did not add costs or impede the use of a valuable asset, the goodwill attached to a company's name. Several commentors pointed to the FDIC's policy statement on the sale of retail repos (46 FR 49197, October 1981) and § 329.10(b)(3)(i) of FDIC's regulations (12 CFR 329.10(b)(3)(i)) as an example of instances in which the FDIC found disclosure sufficient to avoid depositor confusion. (Section 329.10(b)(3)(i), now rescinded, provided that then existing interest rate restrictions did not apply to certain obligations other than deposits, if, among other things, the obligations bore on their face in bold type a statement that the obligation was not an insured deposit.) It was also suggested, as an alternative to placing a disclosure requirement in the regulation, that a policy statement could be issued reminding banks and their subsidiaries or affiliates of the need to adequately disclose the nature of the products sold and whether or not they are insured by the FDIC.

Some comments indicated that even if the common name prohibition was eliminated no further disclosure requirement would be necessary because: (1) Subsections 337.4(c)(6) and 337.4(a)(2)(ix) of the regulation already require the bank and its subsidiary or affiliate to operate pursuant to independent policies and procedures designed to inform customers and prospective customers that the two organizations are separate and that the obligations, etc. of the subsidiary and/or affiliate are not insured deposits, (2) the federal securities laws, NASD rules, and state securities laws provide sufficient protection against depositor confusion, and (3) existing federal law makes it a criminal offense for a corporation to misrepresent that its obligations, etc. are FDIC insured when they are not. (18 U.S.C. 709).

On the issue of depositor confusion the FDIC specifically sought comment from banks, their securities subsidiaries, and affiliates as to what the experiences of these institutions had been over the past two years. In response thereto several comments were received from banks that have shared a common or similar name with a securities affiliate for some time (Merrill Lynch Bank & Trust, Prudential Bank & Trust, E.F. Hutton Bank, Dreyfus Consumer Bank, Resources Industrial Bank, and Leumi Bank & Trust) all of which indicated that they have not experienced any confusion between insured deposits offered by the bank and uninsured investment products offered by their affiliates.

The FDIC also sought comments on whether or not other restrictions, such as restrictions on cross selling, should be imposed if the common name prohibition was deleted from the regulation. The comments responding thereto were overwhelmingly opposed to any limitation on cross selling. Cross selling was described as a method to improve a bank's competitive position and to increase the stability of its earnings. To ban cross selling, continued the comments, would merely increase marketing costs and deprive consumers of convenience. It would also be contrary to the trend in financial services delivery to provide multiple services in one location. These commentors indicated that, absent fraud or abuse, cross selling was a positive marketing tool. Furthermore, existing restrictions in section 337.4(e) of the regulation governing transactions between the bank and its affiliate and subsidiary were sufficient to guard against abuse. Lastly, it was stated that a ban on cross selling would put banks with a securities affiliate or subsidiary at a disadvantage vis-a-vis banks that enter into contractual arrangements with non-affiliates.

Insofar as the separate office/separate entrance requirement is concerned, the remaining 31 comments were equally unanimous in urging the FDIC to eliminate or modify this restriction. The most commonly suggested modfication was that the FDIC should permit the use of clearly distinguishable office space. One comment suggested permitting the use of partitions, railings, or planters and another specifically suggested that the FDIC return to the language originally proposed by the staff for the Board of Directors' consideration in November, 1984 (*i.e.*, separate offices or office space clearly demarcated as belonging to the subsidiary or affiliate). These commentors all felt that disclosure would adequately address any depositor confusion concerns that the FDIC might have.

Specific Objections Raised in Connection with Common Name Prohibition

1. The prohibition is illogical and contrary to good business practice;

2. The use of a common name does not lead to public confusion. Customer confusion arises from misinformation and/or fraudulent conduct;

3. The use of a common name has no relationship to safety and soundness and will not result, without more, in a piercing of the corporate veil;

4. The prohibition increases marketing and other costs. This decreases profits which itself poses a safety and soundness problem, and deters de novo entry;

5. Use of a common name will aid banks in their competition with unregulated providers of financial services;

6. The prohibition impairs the use of a valuable asset (name recognition is an important factor in market penetration) and constitutes an unwarranted taking of property;

7. The FDIC has no authority to adversely affect the use of a name. Federal law on trade mark and trade name confers a property right and the authority to affect that right, if any, is lodged with the Patent and Trademark Office;

8. Having the same or a similar name serves an important purpose, *i.e.*, informs customers of the quality of services and alerts customers to possible conflicts of interest and tying which they will then be in a position to guard against. "People will perceive their own best interest if only they are well enough informed, and . . . the means to that end is to open channels of communication, rather than to close them." *Central Hudson Gas and Electric Corporation* v. *Public Service Commission of New York*, 425 U.S. 748, 770 (1976).

9. The name prohibition is an unlawful restriction on commercial speech. This comment cited a July 1, 1986 Supreme Court Opinion involving a ban on advertising by gambling casinos adopted by Puerto Rico *Posadas de Puerto Rico Associates* v. *Tourism Company of Puerto Rico*, 92 L. Ed. 2d. 266 (1986). Citing the rule established by an earlier case, the Court indicated that commercial speech is afforded limited first amendment protection provided it concerns a lawful activity and is not fraudulent or misleading. If the commercial speech falls within this category, then the speech may only be restricted if the government interest in doing so is substantial, the restrictions directly advance the government's asserted interest, and the restrictions are no more extensive than necessary to serve that interest. The commentor asserted that the name prohibition does not meet this test as less restrictive means (*i.e.*, disclosures) more effectively meet the FDIC's goals.

10. Having a common element in the name of a bank and its securities subsidiary or affiliate only fosters public recognition. The juxtaposition of the word "bank" and the word "securities" in the two titles will suffice to distinguish the identities of the two entities;

11. A logo is only a pictorial method of disclosing affiliation. As the regulation currently permits such disclosure, the ban on the use of a common logo is inappropriate;

12. Bank holding companies, their bank and nonbank subsidiaries and banks and their discount brokerage subsidiaries and/or affiliates are not prohibited from using common names. These is no reason for a different rule for securities companies that engage in other types of securities activities.

Specific Objections Raised in Connection with Separate Office/ Separate Entrance Requirement.

1. The requirement only serves to add expense, deter de novo entry, and result in the loss of walk-in trade;

2. The requirement hampers convenience and one-stop shopping and thus is anti-competitive. (The financial services market is moving toward integrated delivery of services and prohibiting the use of shared space puts banks and their securities subsidiaries and affiliates at a competitive disadvantage.);

3. The requirement bears no relationship to a piercing of the corporate veil;

4. A bank should be able to make the best of its existing branch facilities;

5. INVEST, a broker-dealer which offers investment advisory and brokerage services in bank and S&L branch offices, has done so for several years without separate offices and without evidence of confusion;

6. The separate office/separate entrance requirement is more restrictive than is necessary. While it is important for the securities services to be distinguishable, this can be achieved by less restrictive means (*i.e.*, signs, partitions, dividers, railings, or planters);

7. If the FDIC feels that there would still be a risk of customer confusion if the requirement is liberalized, the FDIC could adopt disclosure requirements which would adequately assure against such confusion;

8. The prohibition on shared space puts banks at a competitive disadvantage with banks that can offer securities services of nonaffiliates through their branch offices without any similar requirements;

9. The interaction with a customer is a more significant factor in generating confusion than the use of shared offices.

In consideration of the foregoing, and for the reasons set out below, the FDIC has determined to propose to amend section 337.4 by: (1) Revising the separate office-separate entrance requirement, (2) deleting the prohibition on the use of a common name or logo, and (3) establishing certain affirmative disclosure requirements.

Discussion

It was the FDIC's intention in adopting both the prohibition on the use of a common name or logo and the separate office/separate entrance requirement (as well as the other requirements with respect to subsidiaries and affiliates) to address three concerns: (1) Safety and soundness (the FDIC wants to ensure that the bank is independent and operated in a manner consistent with safe and sound banking practices); (2) protection of the insurance fund (the FDIC wants to avoid claims against the bank arising out of the public's misperception as to with whom it is dealing and in what capacity); and (3) compliance with section 21 of the Glass-Steagall Act (12 U.S.C. 378) which prohibits securities companies from taking deposits and banks from engaging in certain securities activities. The FDIC continues to believe that the common name prohibition and the separate office/separate entrance requirement are consistent with the FDIC's authority and supportable as a matter of law. The FDIC has determined, however, upon careful reconsideration that its concerns articulated above can be addressed in a less burdensome manner without jeopardizing the FDIC's goals.

In the case of the separate office/ separate entrance requirement, the FDIC is satisfied by the experience of Washington Mutual Savings Bank, Seattle, Washington that neither a separate entrance nor strict adherence to separate offices is necessary to prevent public confusion or to avoid a piercing of the corporate veil provided that: (1) The space utilized by the securities company is physically segregated in some manner and prominently identified as belonging to the securities company and not the bank, and (2) the customers are informed in writing that their investments are not FDIC insured deposits, are not obligations of the bank, and are not otherwise supported by the bank.

Washington Mutual Savings Bank acquired a full service brokerage firm in 1982 which has operated since that time out of the bank's branch offices utilizing segregated office space clearly identified as belonging to the subsidiary The subsidiary's customers are given detailed disclosures: (1) Explaining the lack of FDIC insurance coverage for the securities investments, and (2) explaining that the subsidiary is a separate organization from the bank. According to the bank's comment, the subsidiary has processed more than 130,000 investment transactions since it began operating in the bank's branches during which time not one customer has complained that he or she purchased a security believing it to be FDIC insured.

In view thereof, and commensurate with the comments which argue that maintaining the current physical separation requirement adds additional expense, deters de novo entry, and lessens the ability of banks to compete with other financial services providers who can offer their customers the convenience of one-stop shopping, the FDIC has determined to propose a more flexible physical separation standard that would be coupled with affirmative disclosure. (The disclosure requirements, discussed in detail below, apply whether or not the bank and its subsidiary or affiliate share offices.)

In the case of the prohibition on the use of a common name or logo, the FDIC has taken note of the experience of several banks that have operated for, in some cases, several years while using the same name or a similar name to that of their securities company affiliates. These banks commented that they have not experienced any evidence of customer confusion arising from the use of a similar name to that of their affiliate. In addition, the FDIC notes that several events since the adoption of the common name prohibition have demonstrated that the absence of a common name and logo has not prevented customer confidence from being shaken in a depository institution in the event of adverse disclosures concerning the depository institution's subsidiary or affiliate. For example, publicity concerning Equity Programs Investment Corp. ("EPIC"), a subsidiary of Community Savings and Loan Association, Bethesda, Maryland, played a part in precipitating a run on the savings and loan association. Although the FDIC continues to believe that a common name or logo can exacerbate a difficult situation, the FDIC anticipates that the transaction and other restrictions built into section 337.4 should generally prevent such situations from arising. In view thereof, the incremental protection provided by a different name does not appear to outweigh the costs associated therewith as the same protection can be provided by less burdensome means, *i.e.*, disclosure.

The FDIC's primary concern in connection with a common name or logo is customer confusion and possible claims against the deposit insurance fund or the FDIC as receiver. Those concerns are more directly addressed by adopting a number of affirmative disclosures requirements. (Several comments pointed out that the absence of a common name would not necessarily prevent customers from being confused about deposit insurance depending upon the manner in which the bank and its subsidiary or affiliate market their respective services and the manner in which direct customer contact is handled.) In short, customer disclosures and certain restrictions with respect to advertisements should inform the public with whom they are dealing and in what capacity. Furthermore, in terms of a piercing of the corporate veil, if the remaining requirements as to separateness are met, and absent fraud, written disclosures should adequately protect against the bank being held liable on the obligations of its subsidiary or affiliate. Accordingly, the FDIC has determined to propose to eliminate the prohibition on the use of a common name or logo by a bank and its subsidiary or affiliate and substitute in lieu thereof a system of disclosures. This would be accomplished by deleting §§ 337.4(a)(2)(iii) and 337.4(c)(5) and footnotes 5 and 8 which accompany the relevant text.

Physical Separation Requirement

The regulation currently requires that the bank's securities subsidiary and affiliate by physically separate and distinct from the operation of the bank. (See § 337.4(a)(2)(ii) and § 337.4(c)(2)). Footnote 4 and footnote 7 to the regulation respectively indicate that the subsidiary and the affiliate must have separate offices that share no common entrance with the bank provided, however, that access to the subsidiary's or the affiliate's offices and access to the bank's offices may be through a common outer lobby or common corridor. The proposed amendments would leave untouched the language of §§ 337.4(a)(2)(ii) and 337.4(c)(2) but would revise footnotes 4 and 7 to provide as follows: "If the subsidiary [affiliate] conducts business in the same location in which the bank conducts business, the subsidiary [affiliate] must utilize physically separate offices or office space from that used by the bank. Such offices or office space must be clearly and prominently identified as belonging to the subsidiary [affiliate] and not the bank."

It is the FDIC's intent by proposing this amendment to establish a more flexible physical separation requirement than that presently required by the regulation, *i.e.*, one which leaves the decision as to how to physically segregate the operations of the subsidiary or affiliate from the operations of the bank to the institution itself. The FDIC wishes to stress, however, that actual physical segregation must be achieved. It is the FDIC's present opinion that signs, simple decor differences (*e.g.*, a different color scheme or style of furniture) and other types of distinctions which provide at best minimal differentiation (*e.g.*, badges on sales representatives) will not satisfy the physical separation requirement. With this in mind, the FDIC invites comment on whether or not the regulation should specify what is necessary to achieve physical separation or whether the FDIC should adopt the proposed language, enforce the regulation on a case-by-case basis, and eventually adopt one or more interpretive rulings pursuant to section 337.4 based upon agency experience if compliance has been unsatisfactory.

Any subsidiary that is required to be a bona fide subsidiary, and any affiliate subject to the restriction of section 337.4(c), will be able to take advantage of the revised physical separation requirement. Such subsidiaries and affiliates will also be required to make a number of disclosures to their customers and in their advertisements. (See discussion below.) The disclosure requirements would be accomplished by adding a new footnote to paragraphs 337.4(a)(2)(ix) and 337.4(c)(6) which respectively set forth the requirement that the bank's subsidiary [affiliate] conduct business in a manner so as to inform prospective and existing customers that the subsidiary [affiliate] is a separate entity from the bank and that the investments, for which the bank is not responsible, are not FDIC insured deposits. As the affirmative disclosure requirements clarify that written disclosures given at certain specified times are necessary in order to comply with the above, the disclosure requirements are applicable regardless of whether or not the bank and the subsidiary or affiliate share offices.

Disclosure Requirements

The proposed amendments add a number of disclosure requirements applicable to customer dealings as well as to the advertisement of services. These requirements not only serve as a substitute for the ban on the use of a common name or logo but will, as stated above, apply equally in the case of any subsidiary that is required to be a bona fide subsidiary, and any affiliate that engages in securities activities of the type prohibited to a bank under the Glass-Steagall Act, regardless of whether or not the bank and the subsidiary, or the bank and the affiliate, share offices or, with two exceptions, share a common name or logo.

The disclosure requirements and advertising restrictions would be accomplished by adding a new footnote to section 337.4(a)(2)(ix) (to be

redesignated as (a)(2)(viii)) and by revising footnote 9 to section 337.4(c)(6) (to be redesignated as (c)(5)) and footnote 8 respectively). Section 337.4(a)(2)(ix) and section 337.4(c)(6) provide that in order to be a bona fide subsidiary (or for the affiliate relationship to be permissible) the subsidiary (or affiliate) must conduct business pursuant to independent policies and procedures designed to inform customers and prospective customers that the subsidiary (or affiliate) is a separate organization from the bank and that investments recommended, offered or sold by or through the subsidiary (or affiliate) are not bank deposits, are not insured by the FDIC, are not guaranteed by the bank, and are not otherwise obligations of the bank. Footnote 6 and 8 as added by the proposal will clarify that this language requires, but is not necessarily limited to requiring the following affirmative disclosures: (1) The subsidiary or affiliate must provide to each customer or prospective customer a written disclosure indicating that the subsidiary or affiliate is a separate organization from the bank and that any investments recommended, offered or sold by or through the subsidiary or affiliate are not obligations of the bank are not FDIC insured deposits and are not guaranteed, or otherwise supported, by the bank; (2) in the case of any advertisements, promotions, solicitations, or the like which jointly promote or discuss the services or products of the bank and the subsidiary or affiliate, the advertisement, promotion etc., must clearly and prominently contain the same disclosure as above; (3) if the bank and its subsidiary or affiliate have the same or a similar name, all written communications with the bank's customers by the subsidiary or affiliate, be they direct or indirect, must carry the same clear and prominent disclosure; and (4) if the bank's subsidiary or affiliate recommends, offers, or sells any investment instrument that is denominated with the same or a similar name to that shared by the bank and its subsidiary or affiliate, the above disclosure must be made.

The item (1) disclosure must be given when the customer relationship is established prior to the subsidiary or affiliate executing or otherwise entering into any transaction with, or on behalf of, the customer. The deposit insurance disclaimer is not required if the instruments that are recommend, offered, or sold are in fact FDIC insured deposits. This disclosure is a one-time disclosure. The item (1) disclosure must be given to customers whose relationship with the subsidiary or affiliate was established prior to the effective date of the amendment. Disclosure to such customers must occur at the time of the customer's first transaction with the subsidiary or affiliate after the disclosure requirement becomes effective.

Insured nonmember banks are required under 12 U.S.C. 1828(a) to include in their advertisements a statement to the effect that their deposits are FDIC insured except in instances in which the FDIC has exempted advertisements which do not relate to deposits or when it is impractical to include such a statement therein. Section 328.2(c) of the FDIC's regulations (12 CFR 328.2(c)) currently provides that an insured bank is not required to use the FDIC official advertising statement if it is advertising banking services jointly with an uninsured institution or advertising securities services. The existing regulation, however, does not prohibit the bank from doing so. An advertisement which jointly promotes or discusses banking services and the securities services of a subsidiary or affiliate can mislead the public, especially if the advertisement indicates that the bank is FDIC insured and especially if the bank and its subsidiary or affiliate share the same or a similar name. The FDIC is therefore proposing that all such joint advertisements carry a disclaimer with regard to deposit insurance and clearly indicate that the bank and the subsidiary or affiliate are separate organizations. We emphasize that this disclosure, as well as the one-time disclosure required when a customer relationship is established, applies regardless of whether or not the bank and its subsidiary or affiliate share offices or a similar name.

As any communication with the bank's customers by the subsidiary or affiliate could mislead those customers if the bank and its affiliate or subsidiary have the same or a similar name, it is proposed that these communications carry the deposit insurance disclaimer as well as the other information described above. For example, if the bank's subsidiary places a flier or some other type of written promotion, annoncement of services or investment opportunities, or the like, in bank statements mailed to the bank's depositors, or directly sends such promotions to customers named on the bank's customer list, the promotions must disclose that the instruments are not FDIC insured deposits, that the subsidiary is a separate organization from the bank, and that the obligations of the subsidiary are not obligations of the bank. Promotions to the general public (*e.g.* newspaper, magazine, or television advertisements) do not require such disclosures (even if the subsidiary or affiliate have a similar name to that of the bank) provided that such advertisements do not jointly promote the services of the bank. While such general promotions are potentially confusing if the bank and the affiliate or subsidiary have the same or a similar name, anyone initiating a customer relationship with the subsidiary or affiliate as a result of the general promotion will receive a written disclosure disclaiming deposit insurance coverage, etc. at the inception of the customer relationship. (We specifically invite comment on whether or not this disclosure requirement should apply regardless of whether the bank and its subsidiary or affiliate share a similar name.)

The above disclosures must also be made whenever an affiliate or subsidiary of the bank recommends, offers, or sells any investment instrument that is denominated with the same name or a name similar to that shared by the bank and its subsidiary or affiliate. For example if the bank is named ABC Bank & Trust and its securities affiliate is ABC Securities Company, if the affiliate sells shares in the ABC mutual funds, the disclosure would have to be given to the customers who purchased the shares in the mutual fund. The disclosure would have to be given prior to the execution of the trade. (We invite comment on whether or not this disclosure requirement should apply when the investment instrument is denominated with a name similar to the bank's name regardless of whether or not that name is shared by the subsidiary or affiliate.)

It is the FDIC's intent to generally use the following rules in determining whether a bank and its subsidiary or affiliate have a similar name. Any two names that share one or more of the same words or initials (other than commonly used business terms or abbreviations) will be considered to be similar and will thus trigger disclosure. The use by a bank and its affiliate or subsidiary as a name of an acronym publicly associated with the other will trigger disclosure. If any two names in question differ only slightly in spelling or wording, the two names will be considered to be similar and thus trigger disclosure.

In addition to inviting comment on the items specified above, the FDIC invites comment on whether or not the

regulation should set forth the specific text which must be used to accomplish disclosure and if so, precisely how that text should read. We invite comments on whether or not the FDIC should require that customer disclosures be given in conjunction with every securities transaction entered into by the bank's subsidiary or affiliate (in all cases? or only if the bank and the subsidiary or affiliate have the same or a similar name?). Lastly, we specifically invite comments addressing the timing of the disclosures, the burdens attendant to the disclosures as proposed, alternatives to the proposed amendments, comments on whether or not the proposed amendments will adequately protect banks, and comments on whether the regulation should require that the subsidiary or affiliate obtain the customer's signature on the disclosures which would then be retained and perhaps periodically updated.

Paperwork Reduction/Regulatory Flexibility Act Analysis

The Paperwork Reduction Act (44 U.S.C. 501 *et. seq.*) is inapplicable to the proposed amendments as they neither establish any recordkeeping or collection of information requirement nor amend any such existing requirement.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) the FDIC's Board of Directors hereby certifies that the proposed amendments, if adopted, will not have a significant impact on a substantial number of small entities. The FDIC's Board of Directors bases its conclusion on the belief that the proposed amendments will reduce the costs (both monetary and competitive) that are associated with the existing prohibitions on the use of a common name or logo and the requirement for separate offices that share no common entrance. For this reason the Board of Directors anticipates that the effect of the amendments would be beneficial rather than adverse. Furthermore, small entities are generally expected to share the benefits of the amendments along with larger institutions.

List of Subjects in 12 CFR PART 337

Banks, banking, securities, State nonmember banks.

In consideration of the foregoing, the FDIC proposes to amend Part 337 of Title 12 of the Code of Federal Regulations as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for Part 337 continues to read as follows:

Authority: Sec. 6, 64 Stat. 876, 12 U.S.C. 1816; sec. 8(a), section 2[8(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 879), effective September 21, 1950, as amended by section 204 of title II of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1054), effective October 16, 1966; section 6(c)(14) of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 618), effective September 17, 1978; and section 113(g) of title I of the Act of October 15, 1982 (Pub. L. No. 97–320; 96 Stat. 1473 and 1474), effective October 15, 1982; 12 U.S.C. 1818(a); sec. 8(b), section 2[8(b)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by section 202 of title II of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1046), as amended by section 110 of title I of the Act of October 28, 1974 (Pub. L. No. 93–495; 88 Stat. 1506); section 11 of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 624); sections 107(a)(1) and 107(b) of title I of the Act of November 10, 1978 (Pub. L. No. 95–630; 92 Stat. 3649 and 3653); and sections 404(c), 425(b) and 425(c) of title IV of the Act of October 15, 1982 (Pub. L. No. 97–320; 96 Stat. 1512 and 1524), 12 U.S.C. 1818(b); sec. 9, 64 Stat. 881–882, 12 U.S.C. 1819; sec. 18(j)(2), 92 Stat. 3664, 12 U.S.C. 1828(j)(2), sec. 422, 96 Stat. 1469 (Pub. L. No. 97–320); sec. 11(a), section 2[11(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 884)), effective September 21, 1950, as amended by section 301(c) of title III of the Act of October 16, 1966 (Pub. L. No. 89–695; 80 Stat. 1055), effective October 16, 1966; section 7(a)(3) of title I of the Act of December 23, 1969 (Pub. L. No. 91–151; 83 Stat. 375) effective December 23, 1969; sections 101(a)(3) and 102(a)(3) of title I of the Act of October 28, 1974 (Pub. L. No. 93–495; 88 Stat. 1500 and 1502), effective November 27, 1974; section 1401(a) of title XIV of the Act of November 10, 1978 (Pub. L. No. 95–630; 92 Stat. 3712), effective March 10, 1979; section 323 of title III of the Act of December 21, 1979 (Pub. L. No. 96–153; 93 Stat. 1120); section 308 of title III of the Act of March 31, 1980 (Pub. L. No. 96–221; 94 Stat. 147), effective March 31, 1980; and section 103 of title I of the Act of December 26, 1981 (Pub. L. No. 97–110; 95 Stat. 1514), effective December 26, 1981; sec. 11(f), section 2[11(f)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 885), effective September 21, 1950, as amended by section 6(c)(20) of the Act of September 17, 1978 (Pub. L. No. 95–369; 92 Stat. 619), effective September 17, 1978, 12 U.S.C. 1821(f).

2. It is proposed that footnote 4 to § 337.4(a)(2)(ii) be revised to read as follows:

[4] If the subsidiary conducts business in the same location in which the bank conducts business, the subsidiary must utilize physically separate offices or office space from that used by the bank. Such offices or office space must be clearly and prominently identified so as to distinguish the subsidiary from the bank.

§ 337.4 [Amended]

3. It is proposed that § 337.4(a)(2) be amended by removing paragraph (iii) and footnote 5 to paragraph (iii), by redesignating paragraphs (iv), (v), (vi), (vii), (viii) and (ix) as paragraphs (iii), (iv), (v), (vi), (vii) and (viii) respectively and by redesignating footnote 6 as footnote 5.

4. It is proposed that § 337.4(a)(2) be amended by adding footnote 6 to the end of newly redesignated paragraph (viii) to read as follows:

[6] This provision requires, but is not necessarily limited to requiring, the following: (1) the subsidiary must provide each customer or prospective customer a written disclosure indicating that the subsidiary is a separate organization from the bank, that any investments recommended, offered or sold by or through the subsidiary are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the subsidiary are not obligations of the bank and are not guaranteed, or otherwise supported, by the bank. Disclosure must be given at the inception of the customer relationship prior to the subsidiary executing or otherwise entering into any transaction with, or on behalf of, the customer. Any customer of the subsidiary who established that relationship prior to [insert effective date of the amendment] must be given the above disclosure at the time of the customer's first transaction with the subsidiary after [insert effective date of the amendment]; (2) any advertisements, solicitations, promotions or similar communications with customers or prospective customers which jointly promote or discuss the services or products of the subsidiary and the bank must clearly and prominently state that the subsidiary and the bank are separate organizations, that the investments recommended, offered, or sold by or through the subsidiary are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the subsidiary are not obligations of the bank and are not guaranteed, or otherwise supported, by the bank; (3) if the bank has the same name or a similar name to that of its subsidiary, all written communications with the bank's customers by the subsidiary, either directly or indirectly through the bank, must clearly and prominently indicate that the subsidiary is a separate organization from the bank, that the investments recommended, offered or sold by or through the subsidiary are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the subsidiary are not obligations of the bank and are not guaranteed, or otherwise supported, by the bank; and (4) the above disclosure must be given if the bank's subsidiary recommends, offers, or sells any investment instrument that is denominated with the same name or a name similar to that shared by the bank and its subsidiary. Disclosure must be given prior to the execution of the trade.

5. It is proposed that footnote 7 to § 337.4(c)(1) be revised to read as follows:

[7] If the bank conducts business in the same location in which the affiliate conducts business, the bank must utilize physically separate offices or office space from that used by the affiliate. Such offices or office space must be clearly and prominently identified so as to distinguish the bank from the affiliate.

6. It is proposed that § 337.4 be amended by removing from § 337.4(c) paragraph (5) and footnote 8 to paragraph (5), by redesignating paragraph (6) as paragraph (5), by redesignating footnote 9 as footnote 8 and adding it to the end of newly redesignated paragraph (5), by redesignating footnotes (10), (11) and (12) as (9), (10) and (11) respectively, and by revising newly redesignated footnote 8 to read as follows:

[8] This provision requires, but is not necessarily limited to requiring, the following: (1) The affiliate must provide to each customer or prospective customer a written disclosure indicating that the affiliate is a separate organization from the bank, that any investments recommended, offered or sold by or through the affiliate are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the affiliate are not obligations of the bank and are not guaranteed, or otherwise supported, by the bank. Disclosure must be given at the inception of the customer relationship prior to the affiliate executing or otherwise entering into any transaction with, or on the behalf of, the customer. Any customer of the affiliate who established that relationship prior to [insert effective date of the amendment] must be given the above disclosure at the time of the customer's first transaction with the affiliate after [insert effective date of the amendment]; (2) any advertisements, solicitations, promotions or similar communications with customers or prospective customers which jointly promote or discuss the services or products of the affiliate and the bank must clearly and prominently state that the affiliate and the bank are separate organizations, that the investments recommended, offered, or sold by or through the affiliate are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the affiliate are not obligations of the bank and are not guaranteed, or otherwise supported, by the bank; (3) if the bank has the same name or a similar name to its affiliate, all written communications with the bank's customers by the affiliate, either directly or indirectly through the bank, must clearly and prominently indicate that the affiliate is a separate organization from the bank, that the investments recommended, offered or sold by or through the affiliate are not FDIC insured deposits unless otherwise so indicated, and that the obligations of the affiliate are not obligations of the bank and are not guaranteed, otherwise supported, by the bank; and (4) the above disclosures must be given if the bank's affiliate recommends, offers, or sells any investment instrument that is denominated with the same name or a name similar to that shared by the bank and its affiliate. Disclosure must be given prior to the execution of the trade.

By Order of the Board of Directors.

Dated at Washington, DC, this 31st day of March, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-7866 Filed 4-8-87; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 7

National Bureau of Standards

15 CFR Part 280

[Docket No. 70219-7019]

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Proposed rule.

SUMMARY: The National Bureau of Standards proposes to revise the National Voluntary Laboratory Accreditation (NVLAP) procedures (15 CFR Part 7) in three ways. First, the concept of Laboratory Accreditation Programs (LAPs) within the larger framework of NVLAP is proposed to be eliminated. This will allow NVLAP to offer accreditation to laboratories in the most cost effective manner, be it product testing accreditation or field of testing accreditation, resulting in lower costs to the NVLAP program and to individual laboratories seeking accreditation. Second, the National Laboratory Accreditation Advisory Committee (NLAAC) is proposed to be eliminated. Advice and guidance of NLAAC were vital to NVLAP during the early years of its development. After ten successful years of operation, however, NVLAP no longer requires the expertise originally provided by the Committee.

Third, the NVLAP procedures are proposed to be redesignated as Part 280 of title 15 of the Code of Federal Regulations (CFR), thus making their placement within the CFR consistent with the location of the NVLAP Program within the National Bureau of Standards.

DATE: Comments on the proposed revision must be received by June 8, 1987.

ADDRESS: Comments on the proposed revision should be mailed to Harvey Berger, Manager, Laboratory Accreditation, ADMIN A531, National Bureau of Standards, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Harvey Berger, (301) 975-4017.

SUPPLEMENTARY INFORMATION:

Background

The procedures for the National Voluntary Laboratory Program (NVLAP), were first published in the **Federal Register** on February 25, 1976 (41 FR 8163-8168). Since then, the NVLAP procedures have been amended five times: On March 9, 1979, to institute optional procedures for use by Federal agencies (designated Part 7b—44 FR 12982-12990); on April 25, 1979, to institute optional procedures for use by qualified private sector organizations (designated Part 7c—44 FR 24274-24282); on April 21, 1980, to permit inclusion of additional relevant standards and test methods in a laboratory accreditation program (LAP) established under NVLAP procedures (45 FR 26993-26994); on July 17, 1981, to add accreditation criteria to the NVLAP procedures and to replace separate criteria committees with one NVLAP advisory committee (46 FR 37029-37040); and on November 8, 1984, to update and streamline the procedures by consolidating Parts 7a, 7b and 7c into a new Part 7. The NVLAP procedures presently appear as Part 7 of title 15 of the Code of Federal Regulations.

There are three major reasons for revising the NVLAP procedures. First, the concept of Laboratory Accreditation Programs (LAPs) within the larger framework of NVLAP is eliminated. A given LAP offers a "menu" of test methods related to a specific product or service from which a laboratory may select any number for accreditation. While the range of NVLAP activities remained small, the establishment of LAPs were a convenient administrative mechanism for offering accreditation to laboratories with limited needs and interest. As the NVLAP program has expanded, however, LAPs have become increasingly cumbersome. Laboratories seeking accreditation for a specific field of testing must apply for accreditation in all LAPs applicable to the products they test, and must pay separate fees for each LAP. Eliminating the concept of LAPs will allow NVLAP to offer accreditation to laboratories in the most cost effective manner, be it product testing accreditation or field of testing accreditation. The result will be lower costs to the NVLAP program and to individual laboratories seeking accreditation. The second reason for revising the NVLAP procedures is to

eliminate provisions for a National Laboratory Accreditation Advisory Committee (NLAAC). Advice and guidance of NLAAC were vital to NVLAP during the early years of its development. After ten successful years of operation, however, NVLAP no longer requires the advice originally provided by the Committee. The third reason for revising the NVLAP procedures is to redesignate them as Part 280 of title 15 of the Code of Federal Regulations (CFR), thus making their placement within the CFR consistent with the location of the NVLAP Program within the National Bureau of Standards.

Description of Proposed Changes

Elimination of LAP Concept

Subpart B of the NVLAP procedures are revised throughout to eliminate references to Laboratory Accreditation Programs (LAPs). Other conforming changes are made as appropriate. The effect of these changes is to eliminate the LAP structure in NVLAP's process of determining what accreditations to offer to testing laboratories.

Elimination of National Laboratory Accreditation Advisory Committee

Section 7.5 of the present NVLAP procedures, which pertains to the establishment and functions of a National Laboratory Accreditation Advisory Committee (NLAAC), is removed in its entirety. In addition, the definition contained in section 7.4 of "Advisory Committee" is deleted. The effect of these changes is to remove all references to NLAAC from the procedures.

Redesignation as Part 280

Part 7 of title 15 of the Code of Federal Regulations is redesignated as Part 280 of the same title. In addition, old sections 7.6 and 7.7 are redesignated as new sections 280.5 and 280.6, thus eliminating the gap in numbering caused by the removal of the old section 7.5 pertaining to the National Laboratory Accreditation Advisory Committee. Other conforming changes are made where appropriate.

Request for Comments

Persons interested in commenting on this proposed revision to the NVLAP procedures contained in 15 CFR Part 7 are requested to submit their comments by June 8, 1987 to Harvey Berger, Manager, Laboratory Accreditation, ADMIN A531, National Bureau of Standards, Gaithersburg, MD 20899.

All written comments furnished in response to this notice will become part of the public record and will be available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Herbert Hoover Building, Room 6628, 14th Street between E Street and Constitution Avenue, NW., Washington, DC 20230.

Classification

The NVLAP procedures are rules set out under title 15 of the Code of Federal Regulations (CFR) for administering this voluntary program. These procedures have been included in the CFR so that all affected parties have a widely distributed public source for how the program operates and for determining laboratory accreditation requirements. Users of accredited laboratories may then know the requirements that the laboratories have met in demonstrating competence.

This document is not a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor will it have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if promulgated, would not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act. This is because the program that will operate under this rule, NVLAP, is entirely voluntary for the participating laboratories, and does not have a substantial economic effect upon those laboratories that do choose to participate. It is not a major federal action requiring an environmental assessment under the National Environmental Policy Act. The information collection requirements contained in the NVLAP procedures have been approved by the Office of Management and Budget under the Paperwork Reduction Act and have been assigned OMB control number 0652-0003.

List of Subjects in 15 CFR Parts 7 and 280

Laboratories, National Bureau of Standards, Measurement standards, Voluntary standards.

Dated: March 25, 1987.

D. Bruce Merrifield,

Assistant Secretary for Productivity, Technology and Innovation.

Dated: April 12, 1987.

Ernest Ambler,

Director, National Bureau of Standards.

For the reasons set out in the preamble, it is proposed that Title 15 of the Code of Federal Regulations be amended as follows:

PART 7—[REDESIGNATED AS PART 280]

1. Part 7 is redesignated as Part 280.

PART 280—[AMENDED]

2. The authority citation for Part 280 is revised to read as follows:

Authority: Sec. 2, 31 Stat. 1449, as amended (15 U.S.C. 272); 15 U.S.C. 275a; Reorg. Plan No. 3 of 1946, Part VI.

3. Subpart A is amended as follows:

A. Section 280.1 is revised to read as follows:

§ 280.1 Purpose.

The purpose of Part 280 is to set out procedures under which the National Voluntary Laboratory Accreditation Program (NVLAP) will function.

B. Section 280.2 is amended by revising paragraphs (a) and (c) to read as follows:

§ 280.2 Description and goals of NVLAP.

(a) NVLAP is a system for accrediting testing laboratories found competent to perform specific tests or types of tests. Competence is defined as the ability of a laboratory to meet the NVLAP conditions (Section 280.32) and to conform to the criteria (Section 280.33) as tailored and interpreted for test methods, types of test methods, products, services, or standards for which the laboratory seeks accreditation.

* * * * *

(c) NVLAP offers accreditation programs on the basis of requests and demonstrated need. The specific test methods, types of test methods, products, services, or standards must be requested. The Director of the National Bureau of Standards (NBS) does not unilaterally propose or decide the scope of accreditation. Communication with other laboratory accreditation systems is fostered to encourage development of common criteria and approaches to accreditation and to promote the domestic, foreign, and international acceptance of test data produced by the accredited laboratories.

* * * * *

C. Section 280.3 is revised to read as follows:

§ 280.3 Layout of procedures.

Subpart A describes considerations which relate in general to all aspects of NVLAP. Subpart B describes how technical areas for accreditation are requested, developed and announced. Subpart C describes procedures for accrediting laboratories. Subpart D sets out the conditions and criteria for NVLAP accreditation.

D. Section 280.4 is revised to read as follows:

§ 280.4 Definitions.

Accreditation criteria means a set of requirements used by an accrediting body which a laboratory must meet to be accredited.

Director of NBS means the Director of the National Bureau of Standards or designee.

Director of OPSP means the Director of the NBS Office of Products Standards Policy or designee.

Laboratory accreditation is a formal recognition that a testing laboratory is competent to carry out specific tests or types of tests.

Laboratory assessment means the on-site examination of a testing laboratory to evaluate its compliance with specified criteria.

NBS means the National Bureau of Standards.

NVLAP means the National Voluntary Laboratory Accreditation Program.

OPSP means the NBS Office of Product Standards Policy.

Person means associations, companies, corporations, educational institutions, firms, government agencies at the federal, state and local level, partnerships, and societies—as well as divisions thereof—and individuals.

Product means a type or a category of manufactured goods, constructions, installations, and natural and processed materials, or those associated services whose characterization, classification, or functional performance is specified by standards or test methods.

Proficiency testing means methods of checking laboratory testing performance by means of interlaboratory tests.

Testing laboratory is a laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of products.

Traceability of the accuracy of measuring instruments is a documented chain of comparison connecting the accuracy of a measuring instrument to other measuring instruments of higher accuracy and ultimately to a primary standard.

§ 280.5 [Removed]

E. Section 280.5 is removed in its entirety.

§ 280.5 [Redesignated from § 280.6]

F. Section 280.6 is redesignated as § 280.5.

§ 280.6 [Redesignated from § 280.7]

G. Section 280.7 is redesignated as § 280.6.

4. Subpart B is revised to read as follows:

Subpart B—Offering Accreditation

Subpart B—Offering Accreditation

§ 280.11 Requesting new areas for accreditation.

(a) Any person may request the Director of NBS to begin offering accreditation to testing laboratories for any specific test methods, types of test methods, products, services, or standards which are not presently being offered for accreditation by NVLAP.

(b) Each request must be in writing and should include:

(1) The scope of the proposed new accreditation, in terms of test methods, products, testing services or standards proposed for accreditation.

(2) Specific identification of the applicable standards and test methods including appropriate designations, and the organizations or standards writing bodies having responsibility for them;

(3) A statement of need including:

(i) Technical and economic reasons why the public interest would be served by offering the new accreditation;

(ii) Evidence of a national need to accredit testing laboratories for the specific scope beyond that served by an existing laboratory accreditation program in the public or private sector;

(iii) An estimate of the number of laboratories that may seek accreditation; and

(iv) An estimate of the number and nature of the users of such laboratories; and

(4) A statement of the extent to which the requestor is willing to support developmental aspects of the proposed accreditation with funding and/or personnel.

(c) The Director of OPSP may request clarification of the information required by paragraph (b) of this section.

(d) Before making a determination in response to a request under paragraph (a) of this section, the Director of NBS shall publish a **Federal Register** notice of the receipt of the request if the request complies with the requirements of paragraph (b) of this section. This notice will:

(1) Describe the scope of the proposed new accreditation;

(2) Indicate how to obtain a copy of the request; and

(3) State that anyone may submit comments on the need for the proposed accreditation to the Director of OPSP within 60 days of the date of the notice.

§ 280.12 Determination of need.

(a) The Director of NBS shall offer accreditation on the basis of need. Government agencies and private sector organizations may establish the need by using §§ 280.13 and 280.14.

(b) After receipt of a request under section 280.11, the Director of NBS shall analyze it to determine if a need exists for the requested accreditation. In making this determination, the Director of NBS shall consider the following:

(1) The needs and scope of the initial request;

(2) The needs and scope of the user population;

(3) The nature and content of other relevant public and private sector laboratory accreditation programs;

(4) Compatibility with the criteria referenced in Section 280.33;

(5) The importance of the requested accreditation to commerce, consumer well-being, or the public health and safety;

(6) The economic and technical feasibility of accrediting testing laboratories for the test methods, types of test methods, products, services, or standards requested; and

(7) Recommendations from written comments for altering the scope of the request by adding or deleting test methods, types of test methods, products, services or standards.

(c) If the Director of NBS decides that a need has been demonstrated, and if resources are available, the Director of OPSP shall notify interested persons of the decision to offer the requested accreditation.

(d) If the Director of NBS concludes that there is a need for accreditation but there are no resources for development, the Director of OPSP shall notify the requestor and other interested persons

of the decision not to proceed until resources become available.

(e) If the Director of NBS decides that a need for a requested new accreditation has not been demonstrated, the Director of OPSP shall notify the requestor and other interested persons of the decision and the reasons not to proceed.

§ 280.13 Request from a government agency.

(a) Any federal, state or local agency responsible for regulatory or public service programs established under statute or code, which has determined a need to accredit testing laboratories within the context of its programs, may request the Director of NBS to begin offering accreditation to testing laboratories for any specific test methods, types of test methods, products, services, or standards which are not presently being offered for accreditation by NVLAP.

(b) Each request should include the information required in § 280.11(b) and:

(1) A description of the procedures followed or a citation of the specific authority used to determine the need for accreditation in a new test method, type of test method, product, service or standard; and

(2) For state and local agencies, a statement of why the requested new accreditation should be of national scope.

(c) The Director of OPSP may request clarification of the information required by paragraph (b) of this section.

(d) Before deciding to offer an accreditation in response to a request under paragraph (a) of this section, the Director of NBS may publish a **Federal Register** notice of the receipt of the request indicating how to obtain a copy of the request and stating that anyone may submit comments on the need for the proposed accreditation to the requesting government agency.

(e) The Director of OPSP shall notify interested persons of the decision to proceed or not to proceed with development of new accreditation.

§ 280.14 Request from a private sector organization.

(a) Any private sector organization which has determined a need may request the Director of NBS to begin offering accreditation to testing laboratories for any specific test methods, types of test methods, products, services, or standards which are not presently being offered for accreditation by NVLAP, if it uses procedures meeting the following conditions:

(1) Public notice of meetings and other activities including requests for accreditation are provided in a timely fashion and are distributed to reach the attention of interested persons;

(2) Meetings are open and participation in activities is available to interested persons;

(3) Decisions reached by the private sector organization in the development of a request for accreditation represent substantial agreement of the interested persons;

(4) Prompt consideration is given to the expressed views and concerns of interested persons;

(5) Adequate and impartial mechanisms for handling substantive and procedural complaints and appeals are in place; and

(6) Appropriate records of all meetings are maintained and the official procedures used by the private sector organization to make a formal request are made available upon. request to any interested person.

(b) Each request must be in writing and should include the information required in § 280.11(b) and a description of the way in which the organization has met the conditions specified in paragraph (a) of this section.

(c) The Director of OPSP may request clarification of the information required by paragraph (b) of this section.

(d) Before deciding to offer an accreditation in response to a request under paragraph (a) of this section, the Director of NBS may publish a **Federal Register** notice of the receipt of the request. The notice will indicate how to obtain a copy of the request and will state that anyone may submit comments on the need for the proposed accreditation to the requesting private sector organization within 60 days of the date of the notice.

(e) The Director of OPSP shall notify interested persons of the decision to proceed or not to proceed with development of new accreditation.

§ 280.15 Development of technical requirements.

(a) Technical requirements for accreditation are specific for each test method, type of test method, product, service, or standard for which accreditation is considered, and tailor the criteria referenced in § 280.33.

(b) The Director of OPSP shall develop the technical requirements based on expert advice. This advice may be obtained through one or more informal public workshops or other suitable means.

(c) The Director of OPSP shall make every reasonable effort to ensure that the affected testing community within the scope of the accreditation is informed of any planned workshop. Summary minutes of each workshop will be prepared. A copy of the minutes will be made available for inspection and copying at the NBS Records Inspection Facility.

§ 280.16 Coordination with Federal agencies.

As a means of assuring effective and meaningful cooperation, input, and participation by those federal agencies that may have an interest in and may be affected by planned accreditation activities, the Director of OPSP shall communicate and consult with appropriate officials within those agencies.

§ 280.17 Announcing offering of accreditation.

(a) When the Director of OPSP has completed the development of the technical requirements and established a schedule of fees for accreditation, the Director of NBS shall publish a notice in the **Federal Register** that accreditation is being offered by NBS.

(b) The notice will:

(1) Identify test methods for which accreditation will be offered; and

(2) Advise how to apply for accreditation.

(c) The Director of OPSP shall establish fees in amounts that will enable NVLAP to be self-sufficient. The Director of OPSP shall revise the fees when necessary to maintain self-sufficiency.

§ 280.18 Adding test methods.

Written requests will be considered from any person wishing to add specific standards, test methods, or types of test methods to an established or developing accreditation activity. The Director of OPSP may choose to make them available for accreditation when:

(a) The additional standards, test methods, or types of test methods requested are directly relevant to established activities;

(b) It is feasible and practical to accredit testing laboratories for the additional standards, test methods, or types of test methods; and

(c) It is likely that laboratories will seek accreditation for the additional standards, test methods, or types of test methods.

§ 280.19 Termination of accreditation activities.

(a) The Director of NBS may terminate the offering of accreditation when the Director of NBS determines that a need no longer exists to accredit testing laboratories for the relevant products or

testing services. In the event that the Director of NBS proposes such a termination, a notice will be published in the **Federal Register** setting forth the basis for that determination.

(b) The notice published under paragraph (a) of this section will provide a 60-day period for submitting written comments on the proposal to terminate accreditation. All written comments will be made available for public inspection and copying in the NBS Records Inspection Facility, Room E106, Administration Building, NBS.

(c) After the comment period, the Director of NBS shall determine if public support exists for continuation of the accreditation activity in question. If public comments support continuation of the accreditation activity, the Director of NBS shall publish a **Federal Register** notice announcing continuation of the accreditation activity. If public support does not exist for continuation, the accreditation will be terminated effective 90 days after the date of the published notice of intent to terminate.

(d) If accreditation is terminated, the Director of OPSP shall no longer grant or renew accreditations following the effective date of termination. Accreditations previously granted will remain effective until their expiration date unless terminated voluntarily by the laboratory or revoked by the Director of OPSP.

5. Subpart C is amended as follows:

A. Section 280.21 is amended by revising paragraph (a) to read as follows:

§ 280.21 Applying for accreditation.

(a) Any laboratory may request an application for accreditation in accordance with instructions provided in notices announcing the formal offering of accreditation.

* * * * *

B. Section 280.22 is amended by revising paragraph (a) to read as follows:

§ 280.22 Assessing and evaluating a laboratory.

(a) Information used to evaluate a laboratory's compliance with the conditions for accreditation set out in § 280.32, the criteria for accreditation set out in § 280.33, and the technical requirements established will include:

(1) On-site assessment reports;

(2) Laboratory responses to identified deficiencies; and

(3) Laboratory performance on proficiency tests.

* * * * *

§§ 280.26 through 280.30 [Reserved]

C. Sections 280.26 through 280.30 are added and reserved.

6. Subpart D is amended as follows:

A. Section 280.31 is amended by revising paragraphs (a) and (c) to read as follows:

§ 280.31 Application for accreditation conditions and criteria.

(a) To become accredited and maintain accreditation, a laboratory must meet the conditions for accreditation set out in § 280.32 and the criteria set out in § 280.33.

* * * * *

(c) The criteria are tailored and interpreted for the test methods, types of test methods, products, services or standards. These tailored criteria are the technical requirements for accreditation developed through the procedures of § 280.15.

* * * * *

B. Section 280.32 is amended by revising paragraphs (a)(13)(iii) and (b)(7) to read as follows:

§ 280.32 Conditions for accreditation.

(a) * * *

(13) * * *

(iii) Become unable to conform to any of these conditions or the applicable criteria of § 280.33 and related technical requirements.

(b) * * *

(7) Other information as may be needed.

C. Section 280.33 is amended by revising paragraphs (b)(6), (e)(6), (g)(2) and (g)(4) to read as follows:

§ 280.33 Criteria for accreditation.

* * * * *

(b) * * *

(6) The laboratory shall have one or more signatories approved by the Director of OPSP to sign or have their names appear on test reports that reference NVLAP accreditation.

Approved signatories shall:

(i) Be competent to make a critical evaluation of test results; and,

(ii) Occupy positions within the laboratory's organization which makes them responsible for the adequacy of test results.

* * * * *

(e) * * *

(6) Maintain procedures for the receipt, retention, and disposal of test items, including procedures for storage and handling precautions to prevent damage to test items which could invalidate the test results. Any relevant instructions provided with the tested item must be observed.

* * * * *

(g) * * *

(2) The laboratory shall issue corrections or additions to a test report only by a further document suitably marked, e.g. "Supplement to test report serial number . . . . . ," which meets the relevant requirements of § 280.33(g)(1).

* * * * *

(4) The laboratory shall ensure that all test reports endorsed with the NVLAP logo include the name of an approved signatory.

[FR Doc. 87-7713 Filed 4-8-87; 8:45 am]
BILLING CODE 3510-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 86-12, Notice No. 2]

National Standards for Traffic Control Devices; Revision of Manual on Uniform Traffic Control Devices; Supplemental Information and Extension of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Supplemental information to advance notices of proposed amendments; extension of comment period.

SUMMARY: The FHWA issued an advance notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD) which was published June 9, 1986, at 51 FR 20840 with the comment period closing July 20, 1987. The supplementary information and extension of comment period are being provided in response to a request by the National Committee on Uniform Traffic Control Devices and others that the timeframe should be extended for receipt of comments concerning substantive revisions of the manual. The comment period is being extended to September 1, 1987.

DATE: Written comments must be received on or before September 1, 1987.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 86-12, 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. The

MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $44.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 950-036-00000-1. The purchase of a MUTCD includes a subscription service for adopted revisions.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.ma. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: As discussed in the June 9, 1986, advance notice of proposed amendments to the MUTCD, the FHWA is concerned with the extent of the changes made to the 1978 MUTCD and the impact that these and future changes have on the integrity and continuity of the MUTCD. The FHWA invites responses concerning the need for reformatting or revising the MUTCD and the timeframe in which reformatting or revising should occur. This supplement to the advance notice is intended to extend the comment period and to provide an opportunity ot more fully explore needed changes to Part VI if MUTCD on Traffic Controls for Street and Highway Construction and Maintenance Operations, as they relate to the state-of-the-practice of construction and maintenance work zone traffic control device standards and management. The FHWA is continuing its initiative to review and update Part VI. To assure that all subject areas related to the control of traffic through construction, maintenance, utility, and emergency operation zones are included in this updated section and that it is understandable and useful to those who use this section of the MUTCD, the FHWA solicits comments on the content of Part VI, as well as the format of the entire MUTCD.

In addition to the questions presented in the June 9, 1986, advance notice, the FHWA intends to address a number of Part VI issues which are intended to improve the utility of the MUTCD. A plan to address a number of Part VI standards has been prepared and is available in the Docket. Comments on the following and other Part VI provisions are solicited. For example: (1) Are warrants needed for the application of the different channelizing devices? (2) Should specific traffic control devices applications be prescribed for spot utility operations, or for residential, low-speed, or low-volume work zones? (3) Are device and application standards needed for variable message signs? (4) How should Part VI be arranged to be most useful? The FHWA will use the input from the public to develop an outline for Part VI which we anticipate publishing in the **Federal Register** in December 1987. Although we are asking for comments by September 1, 1987, to the extent possible, additional input will be accepted after that date.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. For the reasons stated herein and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. Due to the preliminary nature of the inquiry, a regulatory evaluation has not been prepared at this time. The expected impact of the changes requested is so minimal that a full regulatory evaluation does not appear to be warranted. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations, Incorporation by reference.

(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.)

(23 U.S.C. Secs. 109(b) and (d), 402(a); 49 CFR 1.48(b), (c), and (n))

Issued on: March 26, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 87-7945 Filed 4-8-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 40

Administration of Education Loans, Grants, and Other Assistance for Higher Education; Extension of Comment Period.

AGENCY: Bureau of Indian Affairs (BIA), Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This Notice extends the comment period from April 2, 1987 to May 4, 1987, on the proposed rule concerning the revision of established grant and financial aid policies and the introduction of uniform procedures for the administration of the higher education grant program including requirements to improve the administrative efficiency of the program. This proposed rule was published in the **Federal Register** on March 3, 1987 (52 FR 6482). The extension of the comment period is in response to requests received from tribes and other interested parties to allow additonal time for comment.

DATE: Comments must be received on or before May 4, 1987.

ADDRESS: Comments should be mailed or delivered to: Mr. Ronal D. Eden, Acting Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs), Bureau of Indian Affairs, Mail Stop 3512 MIB, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Esther Whalen, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, Branch of Post Secondary, Room 3524, Code 523, 18th and C Streets, NW., Washington, DC 20240, telephone number: (202) 343-4871.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 87-7841 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-02-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Administrative Review; No Cause Determinations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission is publishing this proposed rule amending its procedural regulation (29 CFR Part 1601) to implement the Policy Statement on No Cause Determinations adopted by the Commission on December 15, 1986. The amendment provides for a review process by the Commission from District Directors' letters of determination that find no reasonable cause to believe that

unlawful employment discrimination had occurred.

DATE: Written comments on the proposed rule must be received on or before May 11, 1987.

ADDRESSES: Comments should be addressed to the Office of Executive Secretariat, Room 507, Equal Employment Opportunity Commission, 2401 E Street, NE., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's Library, Room 298, 2401 E Street, NW., Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Leonora L. Guarraia, Office of Program Operations (202) 634–6905.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission unanimously voted on December 15, 1986, to permit review of cases where the issuing director finds no discrimination. Currently, after the agency has determined that there is not reasonable cause to believe that unlawful employment discrimination has occurred, EEOC's procedure is to issue a letter of determination that is final when issued and that ends Commission processing of the charge. The Commission also notifies individuals who file charges of their right to file independent lawsuits. In adopting the policy Commission Chairman Clarence Thomas stated, "To further strengthen our credibility as a law enforcement agency and to enhance the public's confidence in our invetigations we are establishing this procedure to review such determinations at the request of charging parties." The Commission reviews all cause decisions in which conciliation efforts fail in determining whether to file suit. The new policy reaches cases that are not now subject to Commission review.

The proposed rule implements the new review procedure. When the field office completes an investigation and finds that there is not reasonable cause to believe that an unlawful employment practice has occurred as to all issues or as to some but not all issues addressed in the determination, the issuing director will send a letter of determination to the parties indicating the finding. The issuance of the director's letter of determination by the field director does not terminate the Commission's administrative processing of the charge. The letter of determination will notify the charging party of his or her right to request a review of the no cause finding by the Commission within 14 days of the date of the letter of determination; and that if the charging party does not request a review of a no cause finding within 14 days of the date of the letter of determination, the District Director's letter of determination will become the final determination of the Commission on the 15th day after the date of the letter of determination. The letter of determination will include notice to the charging party that absent a request for review by the Commission he or she may bring suit in federal court within 90 days of the date of the final determination of the Commission. No separate notice of right to sue will be sent in no cause determination cases. In adopting this procedure, the Commission intends that administrative processing not end with issuance of the issuing director's letter of determination. Rather, administrative processing will include the charging party's opportunity to seek review of the issuing director's no cause determination and appeal the determination to the Commission. Administrative processing of no cause charges will end when:

1. The field director's no cause letter of determination becomes the Commission's final determination. This occurs on the 15th day following the date of the field director's letter of determination, if the charging party has not sought a review of that determination, or

2. The Commission issues a no cause decision following review.

If the review results in a reasonable cause finding, the Commission will process the charge in accordance with its normal procedures. In those instances where no reasonable cause is found as to some but not all issues of a charge, the Commission's conciliation process will begin after any review of the no cause findings in completed.

To accomplish these changes, the Commission proposes to add a new § 1601.19. Current § 1601.18 will move to § 1601.6(b) and current § 1601.19 will move to § 1601.18. Section 1601.19 will contain the review procedure. The Commission also proposes changes to §§ 1601.21 1601.24 and 1601.28.

The proposed rule exempts from the review procedure charges processed by 706 agencies under contract with the Commission. Pursuant to 29 CFR 1601.21(e) and 1601.76 the Commission already reviews determinations of charges processed by 706 agencies. The rule does not apply to Commission decisions, no cause determinations issued by the Commission, or to no cause determinations issued by headquarters directors. Those determinations are to be issued under paragraph (b) of the new § 1601.19.

In the proposed review procedure, the Commission will delegate authority to issue no cause letters of determination to the Director of the proposed Determinations Review Program, Office of Program Operations.

The Commission hereby publishes this proposed rule for public comment.

Accordingly, it is proposed to amend Part 1601 as set forth below.

For the Commission.

Clarence Thomas,

Chairman.

April 1, 1987.

PART 1601—[AMENDED]

1. The authority citation for 29 CFR Part 1601 continues to read as follows:

Authority: Section 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sec. 2000e–12(a), unless otherwise noted.

§ 1601.6 [Amended]

§ 1601.18 [Amended]

2. It is proposed to amend 29 CFR 1601.6 by making the current text of the regulation paragraph (a) and by redesignating the text of section 1601.18 as paragraph (b) of § 1601.6.

§ 1601.19 [Amended and Redesignated as § 1601.18]

3. It is proposed to amend 29 CFR 1601.19 as followings:

Section 1601.19(b) is removed and paragraphs (c), (d), (e), (f) and (g) are redesignated as paragraphs (b), (c), (d), (e) and (f), respectively.

Redesignated § 1601.19(e) is amended as follows: The first sentence is revised as follows: "Written notice of disposition, pursuant to paragraphs (a), (b), (c) or (d) of this section, shall be issued to the person claiming to be aggrieved and to the person making the charge on behalf of such person, where applicable; in the case of a Commission charge, to all persons specified in § 1601.28(b)(2); and to the respondent.

Redesignated § 1601.19(f) is amended as follows: The second sentence is revised as follows: "The Commission hereby delegates authority to Area Directors, or Local Directors to dismiss charges pursuant to paragraphs (a), (b) and (c) of this section, as limited by sec. 1601.21(d)." The third sentence is removed.

§ 1601.18 [Redesignated from § 1601.19]

Section 1601.19 as amended above is redesignated as § 1601.18.

4. It is proposed to add a new § 1601.19 as follows:

§ 1601.19 No cause determinations: procedure and authority.

(a) Where the field office completes its investigation of a charge and finds that there is not reasonable cause to believe that an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination or as to some but not all issues addressed in the determination, the issuing director shall issue a letter of determination to all parties to the charge indicating the finding. The issuing director's letter of determination shall not be final when issued. The letter of determination shall inform the charging party of the right to request a review of the determination by the Commission. The charging party, the person claiming to be aggrieved or the person on whose behalf a charge was filed may request a review of the determination within 14 days of the date of the determination by the Director, Determinations Review Program, Office of Program Operations, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, DC 20507.

(1) The issuing director's letter of determination shall inform the charging party of the right to sue in federal district court within 90 days of the date that the letter of determination becomes the Commission's final determination. The Commission shall not issue a separate notice of right to sue for no cause determinations.

(2) If the charging party does not timely request a review of the issuing director's letter of determination, the letter of determination shall become the final determination of the Commission on the 15th day from the date of the issuing director's letter of determination. If the charging party submits a timely request for review of the issuing director's letter of determination, the Commission shall process the request to review and issue a final determination. If, on review, a finding of reasonable cause is made, then the Commission shall issue a reasonable cause determination and process the charge in accordance with this Part.

(3) A request for review shall be deemed timely if it is personally delivered or postmarked within 14 days after the date of the letter of determination, or if, in the absence of a postmark, it is received by mail within 19 days from the date of the letter of determination. The Director, Determinations Review Program, may for good cause shown extend the time within which a request for review must be filed.

(4) The review procedure provided in this subsection shall not apply to charges processed by 706 agencies under contract with the Commission.

(5) The Commission hereby delegates authority to District Directors or upon delegation to Area Directors or Local Directors, except in those cases involving issues currently designated by the Commission for priority review, to issue a director's no causes letter of determination. The Commission hereby delegates authority to the Director, Determinations Review Program, Office of Program Operations, to issue Commission determinations of no reasonable cause following review.

(b) In those instances in which the Commission has not delegated the authority to issue no reasonable cause determinations to field offices, and the Commission or the Program Director or designee, Office of Program Operations, finds that no reasonable cause exists to believe an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination, the Commission or the Program Director, Office of Program Operations, shall issue a letter of determination to all parties to the charge indicating the finding.

(1) A letter of determination issued under this subsection shall be final when issued, and shall inform the charging party of the right to sue in federal district court within 90 days of the date the charging party receives the letter of determination.

(2) The Commission hereby delegates authority to the Program Director, Office of Program Operations or upon delegation the Directors, Regional Programs, Office of Program Operations, except in those cases involving issues currently designated by the Commission for priority review, to issued no cause letters of determination.

(c) The Commission may on its own initiative reconsider a determination of no reasonable cause and an issuing director may, on his or her own initiative reconsider his or her determination of no reasonable cause. If the Commission or an issuing director decides to reconsider a no cause determination, a notice of intent to reconsider shall promptly issue to all parties to the charge. If such notice of intent to reconsider is issued within 90 days of receipt of the Commission's final no cause determination, and the charging party has not filed suit and did not request and receive a notice of right to sue pursuant to § 1601.28(a)(1), or (2), the notice of intent to reconsider shall vacate the charging party's right to bring suit within 90 days. If the 90 day suit period has expired, the charging party has filed suit, or the charging party had requested a notice of right to sue pursuant to § 1601.21(a)(1) or (2), the notice of intent to reconsider shall vacate the letter of determination, but shall not revoke the charging party's right to sue in 90 days. After reconsideration, the Commission or issuing director shall issue a new determination. In those circumstances where the charging party's right to bring suit in 90 days was revoked, the determination shall include notice that a new 90 day suit period shall begin upon the charging party's receipt of the determination. Where a member of the Commission has filed a Commissioner charge, he or she shall abstain from making a determination in that case.

§ 1601.21 [Amended]

5. It is proposed to revise 29 CFR 1601.21(a) as follows:

(a) After completing its investigation, where the Commission has not settled or dismissed a charge or made a no cause finding as to every allegation addressed in the determination under § 1601.19, the Commission shall issue a determination that reasonable cause exists to believe that an unlawful employment practice has occurred or is occurring under Title VII. A determination finding reasonable cause is based on, and limited to, evidence obtained by the Commission and does not reflect any judgment on the merits of allegations not addressed in the determination.

6. It is proposed to revise the first two sentences of 29 CFR 1601.21(d) as follows:

* * * * *

(d) The Commission hereby delegates to District Director or upon delegation, Area Directors, or Local Directors, the Program Director, Office of Program Operations or upon delegation, the Director of Systemic Programs, Office of Program Operations or the Directors, Regional Programs, Office of Program Operations the authority, except in those cases involving issues currently designated by the Commission for priority review, upon completion of an investigation, to make a determination finding reasonable cause, issue a cause letter of determination and serve a copy of the determination upon the parties. Each determination issued under this section is final when the letter of determination is issued.

* * * * *

§ 1601.24 [Amended]

7. It is proposed to revise the first sentence of 29 CFR 1601.24(a) as follows:

(a) Where the Commission determines that there is reasonable cause to believe that an unlawful employment practice

has occurred or is occurring and after the review provided for in § 1601.19, the Commission shall endeavor to eliminate such practice by informal methods of conference, conciliation and persuasion.

* * * * *

§ 1601.28 [Amended]

8. It is proposed to amend 29 CFR 1601.28(b)(3) by changing the reference from § 1601.19 to § 1601.18.

[FR Doc. 87-7609 Filed 4-8-87; 8:45 am]
BILLING CODE 6570-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 60, 62, 66 and 100

[CGD 86-031]

United States Aids to Navigation System

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal publishes regulations which would conform the United States Aids to Navigation System to the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. This proposal would increase maritime safety and provide a uniform international aids to navigation system by assuring United States participation in the IALA System. This proposal is required to inform U.S. mariners of the ongoing changes, and to eliminate unnecessary information from the present regulations. A change is also made to Part 66 of Title 33 to reflect the change to a uniform international aids to navigation system. A change is made to Part 100 of Title 33 to reflect changes made in Part 62.

DATE: Comments must be submitted on or before May 26, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade G. R. Wulfkuhle, Office of Navigation (G-NSR-1), U.S. Coast Guard, Room 1416, 2100 Second St., SW., Washington, DC, 20593. (202) 267-0344.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include name and address, identify this notice as CGD 86-031, and give the reasons for the comment. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests are received, and the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this rulemaking are Lieutenant Junior Grade G. R. Wulfkuhle, Project Manager, Office of Navigation, and Lieutenant S. R. Sylvester, Project Attorney, Office of Chief Counsel.

Background

In 1982, the United States, along with most of the world's other maritime nations, became a party to the agreement which implemented the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. Called "one of the most outstanding accomplishments in the development of safety of navigation all over the world", the IALA Maritime Buoyage System promotes safety of navigation by establishing a worldwide harmonious buoyage system.

Although such a system has long been a goal of the major maritime nations, attempts at unity were unsuccessful until a series of disastrous mishaps occurred in the English Channel within a short period of time in 1971. Since that time, IALA member nations, of which the United States is one, have worked hard to bring about harmonization. The breakthrough came in 1975, when it was decided to allow two subsystems to the IALA Buoyage System, one of which called for red aids to navigating marking the port hand side of the navigable channel when following the conventional direction of buoyage, and the other allowing nations of the Western Hemisphere to retain the "red-right-returning" scheme so familiar to U.S. mariners.

The United States began conversion of the U.S. Aids to Navigation System to conform with the IALA Maritime Buoyage System in 1983, and will complete the conversion for all Coast Guard maintained aids by 1989. This proposal amends 33 CFR Part 62 to reflect these ongoing changes. The U.S. Aids to Navigation System has not changed in substance. It remains a lateral aids to navigation system. The major changes are the introduction of the yellow Special Mark, the replacement of the black and white Midchannel aids by the red and white Safe Water Mark, and the changing of some aids to navigation signals—most notably green marks which replace the older black porthand marks. United States representatives played a major role in the adaptation of the IALA Maritime Buoyage System, and most of the changes were features which the U.S. had considered adopting prior to the IALA agreement. Widespread publicity and public education efforts have resulted in U.S. mariners already becoming familiar with the changes brought forth in this proposal. Those individuals, corporations, municipalities, or states maintaining private aids to navigation would be required to bring the aids into conformity at the next scheduled maintenance period not later than December 1992.

Regulatory Evaluation

This proposed rule is considered to be non-major under Executive Order 12291, and non-significant under the DOT regulatory policies and procedures (44 FR 11034 February 26, 1979). The economic impact of this proposed rule has been found to be so minimal that further evaluation is unnecessary. Only very minor requirements or cost burdens are placed on the public. Owners of private aids to navigation, as stated in Part 66 of this Title, will have to comply with the marking schemes cited here. These changes may be timed to coincide with maintenance; however, they must be made by December 1992, so the economic impact should be negligible. The proposal merely describes for public record changes which have been made to the U.S. Aids to Navigation System. The Coast Guard certifies that, if adopted, this proposal will have no significant economic impact on a substantial number of small entities. No reporting or record keeping measures are required by this proposal.

List of Subjects in 33 CFR Parts 60, 62 and 66

Navigation (water).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

For the reasons set out in the preamble Chapter I, Subchapter C, Parts 60, 62, 66 and 100, Title 33, Code of Federal Regulations is proposed to be amended as follows:

PART 60—[REMOVED AND RESERVED]

1. Part 60 is removed and reserved.
2. Part 62 is revised to read as follows:

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

Subpart A—General

Sec.

Subpart B—The U.S. Aids to Navigation System

Subpart C—Maritime Radiobeacons

Subpart D—Public Participation

Authority: 14 U.S.C. 85; 33 U.S.C. 1233; 43 U.S.C. 1333(d); 49 CFR 1.46(b).

Subpart A—General

§ 62.1 Purpose.

(a) The Coast Guard administers the U.S. Aids to Navigation System in the navigable waters of the United States. The system consists of Federal aids to navigation operated by the Coast Guard, aids to navigation operated by the other armed services, and private aids to navigation operated by individuals, corporations, municipalities, or states.

(b) The general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the Coast Guard in establishing, maintaining, operating, changing, or discontinuing Federal aids to navigation are described in this part. Regulations concerning the marking of wrecks are found in Part 64. Regulations concerning the use of private aids are found in Part 66. Regulations concerning the marking of artificial islands and structures which are erected on or over the seabed and subsoil of the Outer Continental Shelf of the United States or its possessions are found in Part 67. Regulations concerning the marking of bridges are found in Part 118 of this chapter.

(c) The Coast Guard maintains systems of marine aids to navigation consisting of visual, audible, and electronic signals which are designed to assist the prudent mariner in the process of navigation. The aids to navigation system is not intended to identify every shoal or obstruction to navigation which exists in the navigable waters of the United States, but rather provides for reasonable marking of marine features as resources permit. The primary objective of the aids to navigation system is to mark navigable channels and waterways, obstructions adjacent to these waterways, and obstructions in areas of general navigation which may not be anticipated. Other waters, even if navigable, are generally not marked.

§ 62.3 Definition of terms.

Certain terms as used in this subchapter are defined as follows:

(a) *Aid to Navigation.* The term aid to navigation means any device external to a vessel or aircraft intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation.

(b) *Commerce.* The term commerce, in addition to general, national and international trade and commerce of the United States, includes trade and travel by seasonal passenger craft (marine and air), yachts, houseboats, fishing boats, motor boats, and other craft whether or not operated for hire or profit.

(c) *Commandant.* The term Commandant means the Commandant of the Coast Guard.

(d) *District Commander.* The term District Commander means the commander of a Coast Guard District. Coast Guard Districts are listed in Part 3 of this chapter.

(e) *Corps of Engineers.* The term Corps of Engineers means the Corps of Engineers, Department of the Army.

(f) *Person.* The term person imparts both singular or plural, as the case demands, and includes any Federal Agency, State, Territory, possession, or public subdivision thereof, the District of Columbia, and any corportion, company, association, club, or other instrumentality.

(g) *Navigable Waters of the United States.* The term Navigable waters of the United States is defined in § 2.05–25(a) of this part.

§ 62.5 Marking of Marine Parades and Regattas.

The Coast Guard may establish aids to navigation to mark marine parades and regattas which as regulated by the Coast Guard for the purpose of protecting life and property, or to assist in the observance and enforcement of special regulations. For marine parade and regatta regulations, see Part 100 of this chapter.

Subpart B—The U.S. Aids to Navigation System

§ 62.21 General.

(a) The waters of the United States are marked to assist navigation using the U.S. Aids to Navigation System a system in the process of conforming to the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. Since the system has not been implemented fully in U.S. waters, descriptions for the characteristics of the old system are added to the text in parenthesis as necessary. Until the conversion is complete, mariners should be familiar with both systems and alerted to the fact that changes may not be reflected immediately on published charts. The IALA Maritime Buoyage System is followed by most of the world's maritime nations and will improve maritime safety by encouraging conformity in buoyage systems worldwide. IALA buoyage is divided into two regions made up of Region A and Region B. All navigable waters of the United States follow Region B, except U.S. possessions west of the International Date Line and south of 10 degrees north latitude, which will follow IALA Region A. Lateral aids to navigation in Region A will vary slightly from those described throughout this Subpart. Non-lateral aids to navigation will be the same as those used in Region B. See notes in §§62.25 and 62.27. Appropriate nautical charts and publications must be consulted to determine whether Region A or Region B guidelines are in effect for a given area.

(b) The U.S. Aids to Navigation System is designed for use with nautical charts. Nautical charts portray the physical features of the marine environment, including soundings and other submarine features, landmarks, and other aids necessary for the proper navigation of a vessel. This crucial information cannot be obtained from other sources, even reliable navigation aids such as topographical maps, aeronautical charts, or atlases. The exact meaning of an aid to navigation may not be clear to the mariner unless the appropriate chart is consulted, as the chart illustrates the relationship of the individual aid to navigation to channel limits, obstructions, hazards to navigation, and to the total aids to navigation system.

(c) The navigator should maintain and consult suitable publications and instruments for navigation, depending on the vessel's requirements. This shipboard equipment is separate from the aids to navigation system, but is often essential to its use. The following publications are available from the U.S. Government to assist the navigator:

(1) The Light List, published by the Coast Guard and available through the Government Printing Office or

authorized nautical chart sales agents, lists all major federal aids to navigation and those private aids to navigation which have been reported to the Coast Guard, and includes a physical description of these aids and their locations.

(2) The United States Coast Pilot, published by the National Ocean Service and available through that agency or authorized nautical chart sales agents, supplements the information shown on nautical charts. Subjects such as local navigation regulations, channel and anchorage peculiarities, dangers, climatalogical data, routes, and port facilities are covered.

(3) Local Notices to Mariners are published by local Coast Guard District Commanders. Individuals may be placed on the mailing list to receive Local Notices by contacting the Chief, Aids to Navigation Branch of the appropriate Coast Guard District. These notices pass to mariners information affecting safety to navigation. Changes to aids to navigation, reported dangers, scheduled construction or other disruptions, chart corrections and similar useful marine information is made available through this publication.

(4) The Notice to Mariners is a national publication similar to the Local Notice to Mariners, published by the Defense Mapping Agency, and available by writing: Director, Defense Mapping Agency, Office of Distribution Services, Code IMA, Washington, DC 20315–0010. A letter of justification should be included in the request. This publication serves ocean-going vessels by conveying significant national and international navigation and safety information.

(5) The mariner should also listen to Coast Guard Broadcast Notices to Mariners. These broadcasts contain information on events affecting safe navigation, and occurring between publication of consecutive Local Notices to Mariners. Through Broadcast Notices to Mariners, aids to navigation changes, reported dangers, scheduled construction activities, and other similar events are passed to mariners on a timely basis. Mariners should monitor VHF–FM channel 16 to locate Coast Guard Marine Information Broadcasts.

(d) The U.S. Aids to Navigation System is primarily a lateral system which employs a simple arrangement of colors, shapes, numbers, letters, and light characteristics to mark the limits of navigable routes. This lateral system is supplemented by nonlateral aids to navigation where appropriate.

(e) Generally, lateral aids to navigation indicate on which side of the aid to navigation a vessel should pass when proceeding in the Conventional Direction of Buoyage. In navigable waters of the United States, Conventional Direction of Buoyage is the direction in which a vessel enters navigable channels from seaward and proceeds towards the head of navigation. In the absence of a route leading from seaward, the Conventional Direction of Buoyage generally follows a clockwise direction around land masses. For example, proceeding southerly along the Atlantic Coast, from Florida to Texas along the Gulf Coast, and northerly along the Pacific Coast are considered as proceeding in the Conventional Direction of Buoyage. In some instances, this direction must be arbitrarily assigned. Where doubt exists, the mariner should consult charts and other nautical publications.

(f) Although aids to navigation are maintained to a reasonable degree of reliability, the rigors of the marine environment and various equipment failures do cause discrepancies on occasion.

(g) The Coast Guard makes reasonable efforts to inform the navigator of known discrepancies, and to correct them within a reasonable period of time depending upon resources available. Occasionally, a temporary aid to navigation, which provides different but similar service, is deployed until permanent repairs can be made to the original aid. Notification of such temporary changes are made through the Notice to Mariners system.

§ 62.23 Beacons and buoys.

(a) Aids to navigation are placed on shore or on marine sites to assist a navigator to determine his position or safe course. They mark limits of navigable waters or warn of dangers or obstructions to navigation. The primary components of the U.S. Aids to Navigation System are beacons and buoys.

(b) Beacons are aids to navigation which are permanently fixed to the earth's surface. These structures range from major lighthouses to small unlighted structures called daybeacons. They may be located on land or in the water.

(1) Beacons exhibit a daymark. For small structures these are colored geometric shapes which make an aid to navigation readily visible and easily identifiable against background conditions. Generally, the daymark conveys to the mariner, during daylight hours, the same significance as does the aid's light at night. The daymark of major lighthouses and towers, however, consists of the structure itself. As a result, these daymarks do not infer lateral significance.

(2) Daymarks are also used on structures which do not exhibit lights. These aids are referred to as daybeacons.

(3) Vessels must not pass fixed aids to navigation close aboard due to the danger of collision with rip-rap or structure foundations or the obstruction or danger that the aid marks.

(c) Buoys are floating aids to navigation used extensively throughout U.S. waters. They are moored to the seabed by concrete sinkers with chain or synthetic rope moorings of various sizes and lengths connected to the buoy body.

(1) Mariners attempting to pass a buoy close aboard risk collision with a yawing buoy, the buoy's mooring, or with the obstuction which the buoy marks.

(2) Mariners must not rely on buoys alone for determining their positions due to factors limiting their reliability. Prudent mariners will use bearings or angles from fixed aids to navigation and shore objects, soundings, and various methods of electronic navigation. Buoys vary in reliability because:

(i) Buoy positions represented on nautical charts are approximate positions only due to practical limitations in positioning and maintaining buoys and their sinkers in precise geographical locations.

(ii) Buoy moorings vary in length. The mooring lengths define a "watch circle," and buoys can be expected to move within this circle. Actual watch circles do not coincide with the dots or circles representing them on charts.

(iii) Buoy positions are normally verified during periodic maintenance visits. Between visits, environmental conditions, including atmospheric and sea conditions, and seabed slope and composition, may shift buoys off their charted positions. Buoys may be set off station through collisions or be sunk or capsized. Buoys are also subject to vandalism.

§ 62.25 Lateral aids to navigation

(a) Lateral aids to navigation define the port and starboard side of a route to be followed. These aids to navigation may be either beacons or buoys.

(1) Side marks are those aids to navigation which advise the mariner to stay to one side of the aid. The most frequent use for these aids to navigation is to mark the sides of channels, however they may be used individually to mark obstructions outside of clearly defined channels. Due to the physical diversity of waterways and the maneuvering constraints on its users, sidemarks are not always placed

directly on a channel edge. Mariners should consult the appropriate nautical chart.

(2) Preferred Channel Marks mark channel junctions or bifurcations and often mark wrecks or obstructions. Preferred Channel Marks may normally be passed on either side by a vessel, but indicate to the mariner the preferred channel. Depending on the mariner's direction of travel, however, it may not always be advisable to pass these aids on either side; therefore the appropriate nautical chart should always be consulted.

(b) Colors, light rhythms, and shape significance for these aids to navigation are addressed in subsequent paragraphs of this subpart.

§ 62.27 Non-lateral aids to navigation.

Non-lateral aids to navigation, both fixed structures and buoys, have no lateral significance but may be used to supplement the lateral aids specified in this subpart.

(a) Lighthouses and other lights are fixed structures which vary in size from the typical major seacoast lighthouse to a small, single-pile structure. Lighthouses are placed on shore or on marine sites and are often without lateral significance. When used in this capacity, lighthouses assist the mariner to determine his position or safe course or warn of obstructions or dangers to navigation.

(b) Occasionally, day beacons or minor lights outside of the normal channel will not have lateral significance since they do not define limits to navigable waters. These aids to navigation will utilize "NB", "NR", or "NG" daymarks. These daymarks are diamond-shaped and divided into four diamond-shaped sectors. The side sectors of these daymarks are colored white, and the top and bottom sectors black, red, or green, respectively.

(c) Ranges are aids to navigation systems employing dual beacons which, when the structures appear to be in line, assist the mariner in maintaining a safe course. The appropriate nautical chart must be consulted when using ranges to determine whether the range marks the centerline of the navigable channel or the quarterline, and also what section of the range may be safely traversed. Ranges are generally, but not always, lighted and display rectangular daymarks of various colors.

(d) Large Navigational Buoys (LNB's) are set on major aid to navigation stations. They generally provide the mariner with light, sound, and radiobeacon signals, and some are equipped with radar beacons (racons). LNB's are red in color, have a forty foot diameter hull, and a tower approximately forty feet in height.

(e) Safe Water Marks serve to indicate that there is navigable water all around the aid. These aids are often used to indicate fairways or midchannels, or the seaward end of a channel.

(f) Special Marks serve not to assist navigation, but to alert the mariner to special areas or features referred to in charts or other nautical publications. They may be used, for example, to mark anchorages, traffic separation schemes, military exercise zones, ocean data acquisition systems, etc.

(g) Information and Regulatory Marks are used to alert the mariner to various warnings or regulatory matters. These marks have orange geometric shapes against a white background. The meanings associated with the orange shapes are as follows:

(1) A vertical open-faced diamond signifies danger.

(2) A vertical diamond shape having a cross centered within indicates that vessels are excluded from the marked area.

(3) A circular shape indicates that certain operating restrictions are in effect within the marked area.

(4) A square or rectangular shape will contain directions or instructions lettered within the shape.

§ 62.29 Colors.

(a) When proceeding in the Conventional Direction of Buoyage the lateral significance of the colors of aids to navigation is as follows:

(1) Green (or black) solid-colored aids will mark the port (left) sides of channels, and locations of wrecks or obstructions which must be passed by keeping these side marks on the port (left) hand of a vessel.

(2) Red solid-colored aids will mark the starboard (right) sides of channels, and locations of wrecks or obstructions which must be passed by keeping these side marks on the starboard (right) hand of a vessel.

(3) Preferred Channel Marks are colored with red and green (or black) horizontal bands.

(i) If the topmost band is green (or black), the preferred channel will be followed by keeping the aid on the port (left) side of a vessel.

(ii) If the topmost band is red, the preferred channel will be followed by keeping the aid on the starboard (right) side of a vessel.

(b) Safe Water Marks are red (or black) and white vertically striped. Lighted Safe Water Marks may exhibit a red spherical topmark to further aid in identification.

(c) Special Marks are colored solid yellow.

(d) Information and Regulatory Marks are colored white with international orange horizontal bands and geometric shapes.

(e) Aids to navigation will be fitted with light-reflecting material to increase their visibility in darkness. The colors of this material will convey the same lateral significance as the aid, except that letters and numbers will be white.

(f) Some exceptions to the provisions of this section may be found on the Intracoastal Waterway. See § 62.39.

(g) Aids to navigation in IALA Region A will be similar to those in IALA Region B, however port hand aids will be red when following the Conventional Direction of Buoyage, and starboard hand aids will be green. Appropriate nautical charts and publications must be consulted to determine whether Region A or Region B guidelines are in effect for a given area.

§ 62.31 Shapes.

(a) In order to provide ready identification, certain unlighted buoys and daymarks on minor fixed aids to navigation are differentiated by shape.

(b) Shapes will be laterally significant only when associated with the laterally significant colors, red and green (black).

(1) Cylindrical buoys, referred to as can buoys, and square daymarks indicate the left side of the channel when proceeding in the Conventional Direction of Buoyage. In order to indicate lateral significance, these aids must be either solid green (or black), or red and green (or black) horizontally banded aids where the topmost band is green (or black).

(2) Conical buoys, referred to as nun buoys, and triangular daymarks indicate the right side of the channel when proceeding in the Conventional Direction of Buoyage. In order to indicate lateral significance, these aids must be either solid red or red and green (or black) horizontally banded aids where the topmost band is red.

(c) Unlighted red (or black) and white vertically striped Safe Water buoys will be either spherical or pillar buoys. Spherical buoys are round in shape; pillar buoys consist of a wide cylindrical base topped by a smaller diameter superstructure. Fixed Safe Water aids will employ an eight-sided daymark.

(d) The shapes of lighted, sound, pillar and spar buoys have no lateral significance. Their meanings are conveyed by their numbers, colors, and light colors and rhythms.

(e) Exceptions to the provisions of this section may be found on the Intracoastal Waterway. See §62.39.

(f) Aids to navigation in Region A will be similar to those in Region B, however red unlighted buoys will be cylindrical in shape, and red daymarks will be square-shaped. Corresponding green aids will be conical-shaped or triangular. Appropriate nautical charts and publications must be consulted to determine whether Region A or Region B guidelines are in effect for a given area.

§ 62.33 Numbers and letters.

(a) All solid red and solid green (or black) aids are numbered, with red aids bearing even numbers and green (or black) aids bearing odd numbers. The numbers for each increase in the Conventional Direction of Buoyage. Numbers are kept in approximate sequence on both sides of the channel by omitting numbers where necessary.

(b) Only side marks are numbered. However, aids other than those mentioned above may be lettered to assist in their identification or to indicate their purpose. Sidemarks may carry letters in addition to numbers to identify the first aid to navigation in a waterway, or when new aids to navigation are added to channels with previously completed numerical sequences. Letters on lateral sidemarks will follow alphabetical order from seaward and proceeding toward the head of navigation and will be added to numbers as suffixes.

(c) Exceptions to the provisions of this section will be found on the Western Rivers System. See § 62.40.

(d) The guidelines for the display of numbers and letters on aids to navigation are identical for both Region A and Region B; red aids to navigation display even numbers, and green (or black) aids display odd numbers.

§ 62.35 Light characteristics.

(a) Lights on aids to navigation are differentiated by color and rhythm. Lighthouses and range lights may display distinctive light characteristics to facilitate recognition. No special significance should be attached to the color or rhythm of such lights. Other lighted aids to navigation employ light characteristics to convey additional information.

(b) When proceeding in the Conventional Direction of Buoyage, aids to navigation, if lighted, display light characteristics as follows:

(1) Green (or white) lights mark port (left) sides of channels and locations of wrecks or obstructions which are to be passed by keeping these lights on the port (left) hand of a vessel. Green lights are also used on Preferred Channel Marks where the topmost band is green (or black).

(2) Red (or white) lights mark starboard (right) sides of channels and locations of wrecks or obstructions which are to be passed by keeping these lights on the starboard (right) hand of a vessel. Red lights are also to be used on Preferred Channel Marks where the topmost band is red.

(3) Certain lights marking the Intracoastal Waterway may display reversed lateral significance. See §62.39.

(c) Yellow lights have no lateral significance. Except on the Western Rivers, see § 62.41, white lights have no lateral significance. The purpose of aids exhibiting white or yellow lights may be determined by their shape, color, letters or numbers, and the light rhythm employed.

(d) Light rhythms, except as noted in § 62.41 for the Western Rivers, are employed as follows:

(1) Aids with lateral significance display regularly flashing or regularly occulting light rhythms. Ordinarily, flashing lights (frequency not exceeding 30 flashes per minute) will be used.

(2) Preferred Channel Marks display a composite group flashing light rhythm (groups of two flashes followed by one flash).

(3) Safe Water Marks display a white Morse Code "A" rhythm (short-long flash).

(4) Special Marks display yellow (or white or amber) lights with fixed or slow flashing rhythm preferred.

(5) Information and Regulatory Marks display white lights of various rhythms.

(6) For situations where lights require a distinct cautionary significance, as at sharp turns, sudden channel constrictions, wrecks, or obstructions, a quick flashing light rhythm (frequency not less tha 60 flashes per minute) may be used.

(e) Occasionally lights use sectors to mark shoals or warn mariners of other dangers. Lights so equipped show one color from most directions and a different color or colors over definite arcs of the horizon as indicated on the appropriate nautical chart. These sectors provide approximate bearing information since the observer should note a change of color as the boundary between the sectors is crossed. As sector bearings are not precise, they should be considered a warning only and not used to determine exact bearing to the light.

§ 62.37 Sound signals.

(a) Often sound signals are located on or adjacent to aids to navigation. When visual signals are obscured, sound signals warn mariners of the proximity of danger.

(1) Sound signals are distinguished by their tone and phase characteristics.

(i) Tones are determined by the devices producing the sound (i.e., diaphones, diaphragm horns, reed horns, sirens, whistles, bells, and gongs).

(ii) Phase characteristics are defined by the signal's sound pattern, i.e., the number of blasts and silent periods per minute and their durations. Sound signals emanating from fixed structures generally produce a specific number of blasts and silent periods each minute when operating. Buoy sound signals are generally actuated by the motion of the sea and therefore do not emit a regular signal characteristic.

(2) Where no live watch is maintained, sound signals are normally operated continuously. However, some are equipped with fog detectors which activate sound signals when visibility falls below a predetermined limit.

(b) Mariners should not rely solely on sound signals to determine their positions for the following reasons:

(1) Distance cannot be accurately determined by sound intensity.

(2) Occasionally sound signals may not be heard in areas close to their location.

(3) Signals may not sound in cases where fog exists close to, but not at, the location of the sound signal.

(4) As buoy signals are generally activiated by sea motion, they may produce no signals when seas are calm.

(5) As previously noted, buoy positions are not always reliable. Therefore their sound signals cannot be assumed to be emanating from a fixed position.

§ 62.39 Intracoastal waterway indentification.

(a) In addition to the conventional signals, lateral aids to navigation marking the Intracoastal Waterway exhibit unuque yellow symbols to distinguish them from aids marking other waters.

(1) Yellow triangles will indicate that aids to navigation so marked should be passed keeping them on the starboard (right) hand of a vessel, regardless of the aid's number, color, or light color.

(2) Yellow squares will indicate that aids to navigation so marked should be passed keeping them on the port (left) hand of a vessel, regardless of the aid's number, color, or light color.

(b) The above guidelines apply for vessels traversing the Intracoastal Waterway in a southerly direction on the Atlantic Coast, in a westerly direction on the Okeechobee Waterway,

or in a northerly and westerly direction along the Gulf Coast.

§ 62.40 Western Rivers Marking System.

(a) A variation of the standard U.S. aids to navigation system described above is employed on the Mississippi River and tributaries above Baton Rouge, LA and on certain other rivers which flow toward the Gulf of Mexico.

(b) The Western Rivers System varies from the standard U.S. system as follows:

(1) Buoys are not numbered.

(2) Numbers on beacons do not have odd/even lateral significance, but, rather, indicate mileage from a fixed point (normally the river mouth).

(3) Diamond shaped crossing daymarks, solid red or solid green as appropriate, are used instead of triangular or square lateral daymarks where the river channel crosses from one bank to the other.

(4) Lights on green buoys and on beacons with green daymarks show a single flash which may be green or white.

(5) Lights on red buoys and on beacons with red daymarks show a double flash [Group Flashing (2)] which may be red or white.

(6) Isolated danger marks are not used.

§ 62.41 Racons.

(a) Aids to navigation may be enhanced by the use of radar beacons (racons). Racons, when triggered by a radar signal, will transmit a coded reply to the interrogating radar. This reply serves to identify the aid station by exhibiting a series of dots and dashes which appear on the radar display in a line emanating radially from just beyond the echo of the aid station. Although racons may be used on both laterally significant and non-laterally significant aids alike, the racon signal itself is for identification purposes only, and therefore carries no lateral significance.

(b) Racons are also used as bridge marks to mark the point of best passage.

Subpart C—Maritime Radiobeacons.

§ 62.51 General.

Maritime radiobeacons operate during specific intervals as published in Coast Guard Light Lists. For station indentification, simple characteristics consisting of combinations of dots and dashes are used. The characteristics of marker-beacons are composed of series of dashes for part of a 15 second cycle, which is followed by a silent period to complete the cycle. The transmitted power of maritime radiobeacons is adjusted to provide a useable signal at the service range which meets the operational requirement. Marker-beacons are of low power for local use only. Coast Guard maritime radiobeacons operate within the frequency band 285–325 kilocycles.

§ 62.53 Carrier type operation.

Radiobeacons superimpose the characteristic code on a carrier frequency which is on continuously during the period of transmission . This extends the usefulness of maritime radiobeacons to aircraft and ships employing automatic direction finders.

§ 62.55 Calibration service.

Special calibration radiobeacons, as listed in the current editions of the Coast Guard Light Lists, will broadcast continuously for the purpose of enabling vessels to calibrate their direction finders upon request either to the cognizant District Commander, or, if time does not permit, directly to the calibration station. Signals for requesting calibration service are described in the current editions of the Coast Guard Light Lists. In the case of sequenced radiobeacon stations, continuous transmission for calibration purposes cannot be made without interference resulting with other stations in the same frequency group.

§ 62.57 Caution.

(a) A vessel steering a course for a radiobeacon should observe the same precautions that apply when steering for a light or any other mark.

(b) Distance cannot be accurately determined by radiobeacon signal. Mariners must exercise extreme caution when the aid to navigation which supports the radiobeacon is not visible, and no other means of determining its distance is available.

(c) If the radiobeacon is aboard a Large Navigational Buoy (LNB) or on any marine site, particular care should be exercised to avoid the possibility of collision. In addition, caution should be exercised in using radiobeacons aboard floating aids, because of the possibility that the aid could be off station.

Subpart D—Public Participation

§ 62.61 Recommendations.

(a) The public may recommend changes to existing aids to navigation, request new aids or the discontinuation of existing aids, and report aids no longer necessary for maritime safety. These recommendations should be sent to the appropriate District Commander.

(b) Recommendations, requests, and reports should be documented with as much information as possible to justify the proposed action. Desirable informaiton includes:

(1) Nature of the vessels which transit the area(s) in question, including type, displacement, draft, and number of passengers and crew.

(2) Where practicable, the kinds of navigating devices used aboard such vessels (e.g., magnetic or gyro compasses, radio direction finders, radar, loran, and searchlights).

(3) A chartlet or sketch describing the actual or proposed location of the aid(s), and a description of the action requested or recommended.

§ 62.63 Procedure for reporting defects and discrepancies.

(a) Mariners should notify the nearest Coast Guard facility immediately of any observed aids to navigation defects or discrepancies.

(b) The Coast Guard cannot monitor the many thousands of aids in the U.S. Aids to Navigation System simultaneously and continuously. As a result, it is not possible to maintain every aid operating properly and on its charted position at all times. Marine safety will be enhanced if persons finding aids missing, sunk, capsized, damaged, off station, or showing characteristics other than those advertised in the *Light List*, or other publication, promptly inform the Coast Guard. When making the report to the Coast Gaurd the mariner should consult the *Light List* to ensure the correct geographical information is used due to the similarity of names and geographical areas.

(c) Procedures for reporting defects and discrepancies:

(1) *Radio messages* should be prefixed "Coast Gaurd" and transmitted directly to a Government shore radio station listed in Chapter five, Section 500D of Radio Navigational Aids Publication, 117A and 117B, for relay to the relevant District Commander.

(2) *Radio-telegraph* communication may be established by using the general call "NCG" on the 500 kilohertz frequency.

(3) *Commercial communications facilities* should be used only when vessels are unable to contact a Government shore radio station. Charges for these messages will be accepted "collect" by the Coast Guard.

PART 66—[AMENDED]

3. The authority citation for Part 66 is revised to read as follows:

Authority: 14 U.S.C. 83, 85.; 43 U.S.C. 1333; 49 49 CFR 1.46.

4. Section 66.01–10 is revised to read as follows:

§ 66.01–10 Characteristics.

Owners of private aids shall ensure that the characterstics of their aids conform to the standard U.S. system of aids to navigation as described in § 62.25. Owners shall conform with the requirements at the next scheduled maintenance visit but not later than December 31, 1992.

PART 100—[AMENDED]

5. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

6. Section 100.45 is revised to read as follows:

§ 100.45 Establishment of aids to navigation.

The District Commander will establish and maintain only those aids to navigation necessary to assist in the observance and enforcement of the special regulations issued under the District Commander's authority. These aids to navigation will be in accordance with Part 62 of this chapter. All other aids to navigation incidental to the holding of a regatta or marine parade are private aids to navigation as described in Part 66 of this chapter.

Dated: April 6, 1987.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation.

[FR Doc. 87–7918 Filed 4–8–87; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 110

[CGD12 87–02]

Anchorage Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to amend Anchorage 7 in San Francisco Bay by moving the southeastern corner of the anchorage 230 yards to the north. This would reduce the southern reaches of the anchorage in the shallow waters off of Treasure Island. The shifting of the boundary would also prevent damage from anchoring vessels to an existing submarine power cable and a proposed telecommunications cable.

DATE: Comments must be received on or before May 26, 1987.

ADDRESS: Comments should be mailed or hand-delivered to Marine Safety Division, Twelfth Coast Guard District, Coast Guard Island, Building 54–B, Room 250, Alameda, CA 94501. The comments will be available for inspection and copying between 7:00 a.m. and 3:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lt David A. Conklin at (415) 437–3465.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD12 87–02] and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The proposed rules may be revised in light of comments received. All comments submitted before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will significantly aid the rulemaking process.

Drafting Information

The drafters of this notice are Lt David A. Conklin, project officer, Twelfth Coast Guard District Marine Safety Division, and LCDR Wayne C. Raabe, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of the Proposed Regulation

Anchorage 7 primarily exists for the temporary anchorage of vessels for up to 12 hours in duration. After that the vessel would proceed to either a pier facility or an alternative anchorage ground. The anchorage presently has a submarine power cable transversing the southeastern corner. A telecommunications cable is now proposed for installation across San Francisco Bay between Oakland and San Francisco alongside the existing power cable. To prevent the possibility of damage to those cables from the anchoring of vessels, the southern boundary of Anchorage 7 would be pivoted approximately 230 yards north along Treasure Island. This change would have minimal impact on vessel anchorage since the area eliminated is infrequently used due to its shallow depth.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Chapter 1 of Title 33, Code of Federal Regulations, as follows:

PART 110—ANCHORAGE REGULATIONS

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

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.224(e)(5) is revised to read as follows:

§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, California.

* * * * *

(e) * * *

(5) *Anchorage No. 7.* In San Francisco Bay bounded by the west shore of Treasure Island and the following lines: Beginning at the westernmost point of Treasure Island at latitude 37°49'36" N., longitude 122°22'40" W.; thence northwesterly to latitude 37°50'00" N., longitude 122°22'57" W.; thence westerly towards the San Francisco Bay North Channel to latitude 37°50'00" N., longitude 122°23'44" W.; thence southerly to latitude 37°49'22.5" N., longitude 122°23'44" W.; thence southeasterly to latitude 37°48'40.5" N., longitude 122°23'38" W.; thence to the shore of Treasure Island at latitude 37°49'00" N., longitude 122°22'16" W.

* * * * *

Dated: April 1, 1987.

John D. Costello,

Vice Admiral, U.S. Coast Guard Commander, Twelfth Coast Guard District.

[FR Doc. 87–7909 Filed 4–8–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW -FRL-3183-2]

Hazardous Waste Management System; Indentification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Notification of availability of data and request for comment.

SUMMARY: Today's notice announces the availability of ground-water monitoring data for Bommer Industries Incorporated's two evaportation ponds. This data was collected by Bommer in response to the Agency's request for ground-water data obtained from their recently expanded monitoring system in an effort to more fully characterize the waste included in their petition to exclude specific wastes from hazardous waste control. The ground-water data has been included in the public docket and will be considered by the Agency in making our final delisting decision for Bommer's petition. The Agency requests public comment on this data in relation to the proposed exclusion of Bommer's waste (see 50 FR 48930–48932, November 27, 1985).

DATES: EPA will accept public comments on this data until May 11, 1987. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this notice as it relates to the proposed exclusion of Bommer Industries' waste by filing a request with Bruce Weddle, whose address appears below, by April 24, 1987. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variance Section, Assistance Branch, PSPD/OSW (WH–563), U.S. Environmental protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this docket number: "F–87–BMAN–FFFFF".

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The public docket where this information can be viewed is located at the U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460. The docket is open from 9:30 a.m. to 3:30 p.m. Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For further information on this notice, contact Ms. Lori DeRose, Office of Solid Waste (WH–563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On November 27, 1985 the Agency proposed to grant an exclusion to Bommer Industries, Incorporated under 40 CFR 260.20 and 260.22 (see 50 *FR* 48930–48932 and regulatory docket number "Section 3001—Delisting Petition (4)"). During the public comment period for that proposal, one commentor suggested that the Agency should obtain additional ground-water data from Bommer to more fully characterize any impact the petitioned waste may have had on ground-water. Subsequent to the publication of the proposed exclusion, Bommer added an additional well to their ground-water monitoring system. The monitoring data has been collected and submitted to the Agency in support of Bommer's petition. A copy of the data collected by Bommer Industries has been included in the public docket for the Agency's proposed decision (see docket number "F–87–BMAN–FFFFF"). This data will be considered and used by the Agency in making its final decision on Bommer Industries' delisting petition.

Dated: April 1, 1987.

Bruce R. Weddle,

Director, Permits and State Programs Division.

[FR Doc. 87–7832 Filed 4–8–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 300

[FRL–3141–1]

Intent To Revise the Hazard Ranking System

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency ("EPA") is reviewing and may revise the Hazard Ranking System ("HRS"). The HRS is Appendix A to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which EPA promulgated on July 16, 1982 (47 FR 31180) pursuant to section 105(8)(A) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). The HRS is the principal mechanism EPA uses to place sites on the CERCLA National Priorities List.

This notice requests comments and information related to revising the HRS in advance of the proposed rulemaking. These comments will be taken into account by the Agency in revising the HRS.

DATES: *Written Comments:* EPA will accept written comments on revising the HRS until May 11, 1987.

Public Meeting: EPA will hold a public meeting to hear comments on revising the HRS at the location shown in "**ADDRESSES.**" This meeting will be held on May 7 and 8, 1987 from 9 a.m. to 4:30 p.m. both days. Oral presentations of comments should not exceed 15 minutes in length. A sign-up sheet for presentations will be available from 8:00 to 9:00 a.m. each day. Presentations will be scheduled on a first-come basis for that day only. Persons wishing to speak are asked to provide EPA with a copy of their comments at the time of the presentations.

ADDRESSES: Written Comments: Comments may be mailed to to Russel H. Wyer, Director, Hazardous Site Control Division (Attn: HRS Staff), Office of Emergency and Remedial Response (WH–548E), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Comments will be placed in the Superfund docket. The Superfund docket is located in EPA Headquarters, Waterside Mall Subbasement, 401 M Street, SW., Washington, DC 20460 and is available for viewing by appointment only from 9 a.m. to 4 p.m. Monday through Friday excluding holidays. To obtain copies or make an appointment, contact Denise Sines at 202–382–3046.

Public meeting: The public meeting on the HRS will be held at the Westpark Rosslyn Hotel, 1900 N. Fort Myer Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jane Metcalfe, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH–548E), U.S. Environmental Protection Agency, 401 M Street, SW,. Washington, DC 20460, Phone (800) 424–9346 (or 382–3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* ("CERCLA" or "the Act") in response to the dangers posed by uncontrolled releases of hazardous substances, pollutants, or contaminants. To implement CERCLA, the Environmental Protection Agency (EPA) promulgated the revised National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to section 105 of CERCLA and Executive Order 12316 (46 FR 42237, August 20, 1981). The National Contingency Plan ("NCP"), further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth the guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA.

Section 105(8)(A) of CERCLA required that the NCP include criteria for determining priorities among releases or threatened releases for the purpose of taking remedial or removal action. Criteria were to be based upon relative risk or danger, taking into account the population at risk, the hazardous potential of the substances at a facility, the potential for contamination of drinking water supplies, direct human contact, destruction of sensitive ecosystems, and other appropriate factors. The Agency developed the Hazard Ranking System ("HRS") to implement Section 105(8)(A). The HRS was codified as Appendix A of the NCP.

Section 105(8)(B) of CERCLA requires that the statutory criteria described in the HRS be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States, and that at least 400 sites be designated for priority. The list, which is Appendix B of the NCP, is the National Priorities List ("NPL").

Hazard Ranking System

The principal mechanism for placing sites on the NPL is the application of the HRS. The HRS was designed to be a screening device, one that would allow the Agency to rank sites quickly, using available data. The HRS score reflects the potential for harm to humans or the environment from migration of a hazardous substance by routes involving ground water, surface water, or air and is a composite of separate scores for each of the three possible contaminant migration routes. The score for each route is obtained by assigning numerical values (according to prescribed guidelines) to a set of factors that characterize the potential of the release to cause harm. Sites with HRS scores of 28.50 or above have been placed on the NPL.

Generally, the Agency conducts a Preliminary Assessment (PA) and a Site Inspection (SI) at a site to evaluate it for possible inclusion on the NPL. The PA and SI are low-cost, initial data-gathering efforts designed to provide input for HRS scoring.

National Priorities List

The purpose of the NPL is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site.

The NCP establishes that a site cannot undergo Fund-financed remedial action until it is placed on the final NPL [40 CFR 300.68(a)]. The NPL does not determine priorities for removal actions; EPA may take removal actions at any site, whether listed or not, that meets the criteria of §§ 300.65–300.67 of the NCP. Likewise, EPA may take enforcement actions under CERCLA against responsible parties regardless of whether the site is on the NPL.

Sites are placed on the NPL in accordance with informal rulemaking procedures of section 553 of the Administrative Procedures Act. The NPL now contains 703 sites. An additional 248 sites have been proposed.

II. CERCLA Amendments

On October 17, 1986, CERCLA was amended. The Superfund Amendments and Reauthorization Act of 1986 ("SARA") requires EPA to promulgate changes to the HRS not later than 18 months after the date of enactment and implement these changes 24 months after enactment. The amendments require that EPA modify the HRS so that, "to the maximum extent feasible, it accurately assesses the relative degree of risk to human health and the environment posed by sites and facilities subject to review." Specifically, section 105(c) of SARA requires:

- An assessment of the human health risks associated with contamination or potential contamination of surface waters, either directly or as a result of the runoff of any hazardous substance, pollutant, or contaminant. This assessment should take into account the use of these waters for recreation and the potential migration of any hazardous substance, pollutant or contaminant through surface water to downstream sources of drinking water.
- An evaluation of the damage to natural resources which may affect the human food chain and which is associated with any release or threatened release.
- An assessment of the contamination or potential contamination of the ambient air which is associated with a release or threatened release of hazardous substances.

Section 125 of SARA requires EPA, in its revision of the HRS, to specifically assess those wastes described in section 3001(b)(3)(A)(i) of the Resource Conservation and Recovery Act (RCRA). These wastes include fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels. The amendments require EPA to consider:

(1) The quantity, toxicity, and concentrations of hazardous constituents which are present in such waste and a comparison with other wastes;

(2) The extent of, and potential for, release of such hazardous constituents into the environment;

(3) The degree of risk to human health and the environment posed by such constituents.

Additionally, section 118 of SARA states that EPA shall give a high priority to facilities where the release of hazardous substances or pollutants or contaminants has resulted in the closing of drinking water wells, or has contaminated a principal drinking water supply.

The legislative history of SARA makes clear that Congress did not intend that the revised HRS become a mechanism for making detailed risk assessments; rather, it was intended to be consistent with the limited purpose of the NPL—screening sites that might, after further study, warrant fund-financed remedial action. See 132 Cong. Rec. S14931 (daily ed. Oct. 3, 1986) (Statement of Senator Baucus). Senator Baucus emphasized:

> The Congress recognizes that the Hazard Ranking System must continue to function as a screening tool that will allow the evaluation of a large number of sites in an expeditious manner. *Id.*

In order to improve the accuracy of the HRS, the Agency believes that a modest expansion of data collection activities may be necessary before a site

is proposed for the NPL to implement a revised HRS. To maximize the use of resources at the beginning of the program, EPA must target its data collection activities to specific areas that would most increase the accuracy of the HRS. As was discussed in the preamble to the current HRS (47 FR 31187, July 12, 1982), the amount of information to be collected for HRS scoring must be balanced against the cost and time required to obtain that information. EPA anticipates that several thousand releases may be evaluated in the next several years for inclusion on the NPL. In revising the HRS, the number and types of factors must be consistent with the costs of data collection, the large number of releases, and the resources appropriate for implementing the program. Comments on this notice would be most useful if they would focus on those areas of the HRS where an increase in accuracy is achievable without a significant increase in the time and costs associated with data collection.

III. Technical Issues

As an initial step in its review of the HRS, EPA is requesting comments and information related to revision of the HRS. The comments and information should take into account the recent amendments to CERCLA and the intent of Congress for the HRS to remain a mechanism for screening sites to determine which may need additional comprehensive studies. EPA is soliciting comments on the following areas:

- Existing HRS scoring factors
- Other models for ranking hazardous substance releases
- A mechanism for including direct contact in the HRS
- A mechanism for incorporating human food chain exposures into the HRS

Each of these areas for potential HRS revision is addressed in more detail below. In addition, the Agency would like comments on any other methods for improving the accuracy of the HRS, consistent with the NPL's limited purpose. The comments should address the methodologies needed to implement any such revisions, as well as the associated data requirements and data collection costs.

Existing HRS Scoring factors

EPA is considering modifying the current HRS scoring factors as discussed below. The Agency solicits comments and technical information on the appropriateness of the changes, techniques for incorporating these changes into the HRS, the additional data requirements such changes might necessitate, and the costs associated with collecting these data. In addition, the Agency would like comments and information on whether such a change would increase the accuracy of the HRS and provide better discrimination among sites.

Ground Water Pathway. The existing HRS evaluates the ground water pathway using either "observed release"—direct evidence of a release from a facility to ground water—or "route characteristics"—the potential for a facility to cause a release to ground water—taking into account the use of the ground water ("the aquifer of concern"), as well as the toxicity and persistence of the hazardous substances. The HRS evaluates the population drinking water from the aquifer of concern within a three-mile radius, except where there is a lateral discontinuity in the aquifer which prevents migration of contaminants. It does not take into account the direction of ground water flow, nor the potential for hazardous substances to migrate through the ground water to the drinking water wells. When the HRS was first developed, EPA believed that requiring a precise measure of the affected population would add to the time and expense of applying the HRS. Provisions for limiting the area of concern based on ground water flow direction were not included because of the lack of reliable data on direction of flow and because the direction of flow frequently varies. See the preamble to the original NCP, promulgated July 12, 1982 (47 FR 31190), for more background.

Although EPA still believes that it is very difficult to define ground water flow direction at the time of HRS scoring, the Agency is requesting public comment on the feasibility of including more general flow direction data when determining the target population potentially affected by a release of hazardous substances.

Currently, the HRS only takes into account the existing use made of ground water drawn from the aquifer of concern within three miles of the site. In its revision of the HRS, the Agency is considering modifying this factor to account for the future use of the ground water, as well as existing use. EPA would like comment on the appropriateness of such a change, as well as comment on methods for incorporating the future use of ground water into the HRS.

In response to Section 118 of SARA, EPA is soliciting comments and information on different mechanisms for giving priority in the HRS to those facilities that have caused the closing of drinking water wells or have contaminated a principal drinking water supply.

Surface Water Pathway. The surface water pathway of the existing HRS is scored in the same manner as the ground water pathway, using either "observed release" or "route characteristics" and taking into account the use of the surface water body, as well as toxicity and persistence of the hazardous substances. The surface water pathway does not take into account the mobility and fate of the hazardous substances in the surface water. EPA believed at the time the HRS was developed that such factors could not be determined given the amount of data available about most sites at the time of HRS scoring.

Although EPA still believes that it may be very difficult to precisely determine the mobility and fate of hazardous substances in the surface water, EPA is requesting comments on the feasibility of including such information in the surface water pathway. EPA would like information concerning readily-available and easy-to-use methods for incorporating such a factor into the HRS, the reliability of these methods to accurately assess the mobility of hazardous substances, and whether such a factor would increase the accuracy of the HRS. For example, published information on biomagnification factors could be used to evaluate the potential for a hazardous substance to bioaccumulate.

The HRS currently uses a distance of three miles to determine the target population potentially affected by a release of hazardous substances into the surface water. EPA is soliciting comments and technical information concerning the adequacy of this distance in determining the potential threat to the population from contaminated surface water, as well as alternatives for this distance.

The HRS currently assigns values for use of surface water, with drinking water receiving the highest value of three and recreation receiving a value of two. However, the population using the surface water for recreation is not taken into account in the HRS score. In response to the recent amendments to CERCLA, EPA must evaluate the need for the HRS to place a greater emphasis on the recreational use of the surface water, and would like comments on how such a change could be accomplished. For example, the Agency could evaluate the importance of recreation on a particular stream by looking at its State-designated stream classification and assigning a score. EPA would also like comments on what the weighting of

recreational use of surface waters should be in relation to drinking water use.

Air Pathway. The air pathway in the existing HRS is scored only via an observed release, using data that show contaminant levels at or near a facility that significantly exceed background levels. Potential air releases are currently not considered. EPA is soliciting comments and information on techniques for incorporating a route characteristics/containment component into the air pathway that would allow the Agency to rank potential releases. The comments should address the data that would be needed when considering such a component, the costs for data gathering, and the reliability of the route characteristics components in assessing potential air releases.

The existing air pathway score takes into account the population within a four-mile radius when determining the target population potentially affected by a release of hazardous substances to the air. EPA is soliciting comments on the adequacy of the existing target distance and on other distances that might more accurately reflect the harm to humans from a release of hazardous substances to the air. Comments are also solicited on whether alternative schemes to a fixed distance may be more appropriate. Included with these comments should be technical information on the methodologies available to determine the appropriate target distance limit, the reliability of these methodologies, and the data requirements and data collection costs.

Volume and Concentration of Hazardous Waste. In scoring all contaminant pathways of a site using the existing HRS, EPA considers the quantity of hazardous waste deposited, rather than the quantity of hazardous constituents within these wastes. EPA also does not consider the quantity of hazardous constituents released into the ground water, surface water or air, but only whether that release is significantly above background. When EPA developed the HRS, the Agency believed that determining the quantity of hazardous constituents would require a significant amount of sampling and analyses that would result in substantial delays in the ranking of sites.

The Agency has experienced difficulties in determining, even during a Remedial Investigation, the quantity of hazardous constituents within the waste. However, in response to section 105(g)(2) and section 125 of SARA, as well as the legislative history of SARA, EPA is requesting comments on the feasibility of including such information in a revised HRS. Comments should address methods to incorporate such a factor into the structure of the HRS and the amount of site-specific data necessary to accurately determine the quantity of hazardous constituents deposited. In addition, the comments should address the issue of how to calculate scores for sites for which it is not feasible to obtain such information.

EPA is also considering taking into account the concentrations of hazardous constituents in the ground water, surface water and air. The Agency is soliciting comments on the feasibility of considering environmental concentrations in the HRS, as well as simplified techniques for accomplishing this, taking into account the amount of data available at the time of HRS scoring.

Additionally, in response to section 125 of SARA, the Agency solicits comments and information concerning the quantity, toxicity, and concentrations of hazardous constituents within wastes described in section 3001(b)(3)(A)(i) of RCRA (fly ash and associated wastes), and how such characteristics compare with other types of hazardous wastes.

Toxicity. Currently, the HRS determines the toxicity of hazardous substances using a scheme developed by N. Irving Sax (1984). This scheme rates the toxicity of hazardous substances in ground water, surface water or air, on a scale of 0 to 3 and is primarily based on the acute toxicity of the most toxic substance present. The Agency solicits comment on how the toxicity factor could be revised to more accurately consider the effects from acute, sub-chronic, and chronic exposures. The Agency is also interested in comments concerning the number of substances that should be considered when mixtures of chemicals are being evaluated, as well as information on methodologies that might more adequately characterize the toxicity of hazardous substances. The comments should include a discussion of the data requirements, costs, and reliability of the methodologies.

Sensitive Environments. The existing HRS considers distance to a sensitive environment when evaluating the "targets" affected by a release of hazardous substances to surface water. The current HRS limits the definition of sensitive environments to wetlands and critical habitats of endangered species. EPA is soliciting comments on the appropriateness of modifying the HRS to better consider ecosystem effects or environmental damages and the weighting of such a factor relative to public health concerns. EPA is also soliciting comments on methodologies for evaluating damage to sensitive ecosystems and suggestions on categories of sensitive environments to be protected.

Other Ranking Models

In its review of the HRS, EPA is evaluating a number of alternative models used to evaluate and rank hazardous waste sites. EPA is soliciting information on other systems that might be available to rank relative risk at sites, including specific information on the technical aspects of these systems. The comments should address the data requirements and costs of these systems, and how these systems compare to the HRS in measuring risks to human health or the environment.

Direct Contact

For purposes of the NPL, the current HRS does not take into account direct contact with hazardous wastes (soil ingestion, inhalation, or dermal exposure). However, based on EPA's experience in cleaning up hazardous waste sites, direct contact has been one of the most significant factors in selecting a remedy. The Agency believes that it is appropriate to include such a factor in a revised HRS and is evaluating various mechanisms for doing so, either as a part of one of the current pathways (i.e., ground water, surface water or air), or as a separate pathway. The Agency solicits comments on how the structure of the HRS might be modified to include direct contact and what factors should be included in such a revision.

Human Food Chain Impacts

The CERCLA amendments require EPA to evaluate the effect of hazardous waste sites on natural resources that may affect the human food chain. In response to this requirement, EPA is considering incorporating a human food chain component into a revised HRS. The Agency sollcits comments on the importance of a human food chain pathway in evaluating human exposure to hazardous substances and simplified methodologies to assess these impacts. EPA is also soliciting comments on how to incorporate a substance's persistence and its tendency to bioaccumulate into the human food chain pathway. These comments should address the reliability of these methodologies in accurately assessing the food chain contamination.

IV. Consideration of Comments

Comments on these and other issues related to HRS revisions should be sent to the location given above under the heading **"ADDRESS"**. EPA will review

the comments received in response to this notice prior to issuing the proposed rule.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water supply.

Authority: 42 U.S.C. 9605(8)(B)/CERCLA 105(8)(A).

Dated: March 30, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87-7833 Filed 4-8-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HSQ-130-P]

Medicare Program; Alternative Sanctions for Suppliers of End-Stage Renal Diseases (ESRD) Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed amendments would specify the sanctions that may be imposed on suppliers of ESRD services in lieu of termination of Medicare coverge of those services, the conditions under which the alternative sanctions may be imposed, and the appeal rights of sanctioned suppliers. The rules are necessary to implement a recent amendment to section 1881 of the Medicare law, to provide information about appeal rights, and to reflect other provisions of section 1881(c)(3).

The purpose is to implement the alternative sanctions provisions and ensure clear understanding of appeal rights and the bases for reinstatement of coverage after termination.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on June 8, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-130-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-130-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Spencer Colburn, (301) 594-3413.

SUPPLEMENTARY INFORMATION:.

I. Background

The Social Security Amendments of 1972 (Pub. L. 92-603) made it possible for individuals to become entitled to Medicare on the basis of a diagnosis of end-stage renal disease. The ESRD amendments of 1978 (Pub. L. 95-292) amended the Medicare law to add several provisions applicable to ESRD services and to payment for those services. As with other providers and suppliers of Medicare services, ESRD suppliers are required to meet certain conditions for coverage of the services they furnish to Medicare beneficiaries. The basic sanction for failure to meet those conditions is termination of the provider agreement in the case of providers, and of coverage of the services in the case of suppliers. Section 2352(a) of the Deficit Reduction Act of 1984 (Pub. L. 98-369) amended section 1881(c) of the Medicare law to provide that if a provider is deficient only in the requirement to cooperate in achieving the goals and plans of the network of ESRD facilities to which it belongs, and that deficiency does not pose jeopardy to patient health and safety, the Secretary may impose other sanctions as an alternative to terminating coverge of the ESRD services furnished by that supplier.

II. Proposed Changes

We would amend Subpart U of Part 405 of the Medicare rules by adding three new sections:

- Section 405.2180 would specify the basic sanction, which is termination of Medicare coverage, and the bases for reinstatement of coverage after termination. When termination is based on failure to participate in network activities and pursue network goals, coverage could be reinstated when HCFA finds that the supplier is making a reasonable and appropriate effort to comply with this requirement. When termination is based on failure to meet any of the other conditions specified in Subpart U, coverage would not be reinstated until HCFA found that the reason for the sanction had been removed and there was reasonable assurance that it would not recur.
- Section 405.2181 would describe the alternative sanctions (denial of payment for any patients accepted for care after the effective date of the sanction, and gradual reduction of payments for all patients) and the circumstances under which they might be imposed.
- Section 405.2182 would set forth the notice procedures that HCFA will follow and the appeal rights of sanctioned suppliers. HCFA would give notice to the supplier and the public at least 30 days before the effective date of the sanction. If coverage was terminated, the supplier could appeal under Part 498 of the Medicare rules, which provide for hearing before an Administrative Law Judge (ALJ) and a right to request Appeals Council review of the ALJ's decision. If an alternative sanction is imposed, the supplier would have a right to an informal reconsideration before a HCFA official who had no part in the appealed decision.

III. Response to Comments

Because of the many comments we receive in response to **Federal Register** publication, we cannot acknowledge or respond to them individually. However, we will consider all timely comments and respond to them in the preamble to the final rule.

IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule," a major rule is one that would result in:

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

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

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

In addition, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations

would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all suppliers of ESRD services to be small entities.

We anticipate that the alternative sanctions will be applied only in unusual circumstances and only to a few suppliers of ESRD services. Therefore, we have determined that this proposed rule is not a major rule under Executive Order 12291. We have also determined, and the Secretary certifies, that the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart U is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation continues to read as follows:

Authority: Sections 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Securiy Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr) unless otherwise noted.

2. New §§ 405.2180 through 405.2182 are added to read as follows:

§ 405.2180 Termination of Medicare coverage.

(a) Except as provided in § 405.2182, failure of a supplier of ESRD services to meet one or more of the conditions for coverage set forth in this Subpart U will result in termination of Medicare coverage of the services furnished by that supplier.

(b) If termination of coverage is bassed solely on a supplier's failure to participate in network activities and pursue network goals, as required by § 405.2134, coverage may be reinstated when HCFA determines that the supplier is making reasonable and appropriate efforts to meet that condition.

(c) If termination of coverage is based on failure to meet any of the other conditions specified in this subpart, coverage will not be reinstated until HCFA finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

§ 405.2181 Alternative sanctions.

(a) *Basis for application of alternative sanctions.* HCFA may, as an alternative to termination of Medicare coverage, impose one of the sanctions specified in paragraph (b) of this section if HCFA finds that—

(1) The supplier fails to participate in the activities and pursue the goals of the ESRD network that is designated to encompass its geographic area; and

(2) This failure does not jeopardize patient health and safety.

(b) *Alternative sanctions.* The alternative sanctions that HCFA may apply in the circumstances specified in paragraph (a) of this section include the following:

(1) Denial of payment for services furnished to patients accepted for care after the effective date of sanction, as specified in the sanction notice.

(2) Reduction of payments, for all ESRD services furnished by the supplier, by 20 percent for each 30-day period (after the effective date of sanction) that the supplier continues to be out of compliance with the requirement specified in paragraph (a) of this section.

§ 405.2182 Notice of sanction and appeal rights.

(a) *Notice of sanction.* HCFA gives the supplier and the general public notice of sanction and of the effective date of the sanction. The effective date of the sanction is at least 30 days after the date of the notice.

(b) *Appeal rights: Termination of Medicare coverage.* Termination of Medicare coverage of a supplier's ESRD services because the supplier no longer meets the conditions for coverage of its services is an initial determination appealable under Part 498 of this chapter.

(c) *Appeal rights: Alternative sanctions.* If HCFA proposes to apply a sanction specified in $405.2181(b), HCFA will—

(1) Give the facility notice of the proposed sanction and 15 days in which to request a hearing;

(2) If the facility requests a hearing, provide an informal hearing that includes the following:

(i) Opportunity for the facility to present, in person or in writing, to a HCFA official who was not involved in making the appealed decision, evidence and documentation to refute the finding of failure to participate in network activities and pursue network goals.

(ii) A written hearing decision.

(3) If the decision of the informal hearing supports application of the alternative sanction, provide the facility and the public, at least 30 days before the effective date of the sanction, with a written notice that specifies the effective date and the reasons for the sanction.

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance, and No. 13.774—Supplementary Medical Insurance)

Dated: December 12, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: February 24, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-7928 Filed 4-8-87; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 382

[Docket R-107]

Determination of Fair and Reasonable Rates for the Carriage of Preference Cargoes on Bulk Cargo Vessels

AGENCY: Maritime Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking: Reopening of comment period.

SUMMARY: This notice reopens the comment period for Docket R-107 which closed on March 17, 1987 (51 FR 45135; December 17, 1986). Requests for a one-month extension were made by counsel for Apex Marine Corp. and by counsel for Aquarius Marine Company, Atlas Marine Company, American Shipping Company, American Maritime Transport, Inc., and Moore McCormack Bulk Transport Inc. The extension would provide an opportunity for those parties to obtain information which had been requested from various sources, but which had not been received in time for them to meet the March 17 deadline. The companies maintain that the information requested is critical to comments to be furnished regarding the proposed rule. MARAD considers that the reasons for the requests are valid and the length of the reopened period is reasonable, and hereby reopens the comment period to April 17, 1987.

DATE: The reopened comment period will close April 17, 1987.

ADDRESS: Send the original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street SW., Washington, DC

20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelop or postcard.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590, Tel. (202) 366–2323.

Dated: April 6, 1987.

By Order of the Maritime Administrator

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 87–7921 Filed 4–8–87; 8:45 am]

BILLING CODE 4910–81–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 74, and 94

[General Docket 82–243; FCC 86–524]

Fixed Service Usage of the Frequency Bands 932–935 MHz and 941–944 MHz; Establish Service and Technical Rules for Government and Non-Government

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes technical standards, coordination and licensing procedures for fixed service usage of the 932–935 MHz and 941–944 MHz bands. A First Report and Order in this docket (50 FR 4650; 2/1/85) following a Notice of Proposed Rule Making (47 FR 23491; 5/28/82) and a Further Notice of Proposed Rule Making (48 FR 12267; 3/28/83) reallocated the 932–935 MHz and 941–944 MHz bands for Government and non-Government fixed use, but did not specify procedural and technical rules. This action proposes equal access to the new bands by Government and non-Government users and proposes technical standards similar to those in other private operational fixed bands.

DATES: Comments are due May 4, 1987; reply comments are due June 3, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, telephone (202) 653–8116 or Ron Netro, telephone (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Notice of Proposed Rule Making in General Docket 82–243, FCC 86–524, Adopted November 25, 1986, and Released March 16, 1987.

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

Summary of Third Notice of Proposed Rule Making

1. In this rule making, the Commission proposes technical standards, coordination, and licensing procedures for fixed service usage of the 932–935 MHz and 941–944 MHz bands. On November 21, 1984, the Commission reallocated these bands from a land mobile reserve to a Government and non-Government fixed service. At that time, procedural and technical rules were deferred to allow all interested parties the opportunity to comment on the specific procedures and rules to be followed in sharing this spectrum between Government and non-Government users. This *Notice* proposes licensing and coordination procedures and technical standards for the bands.

2. At present, the Government and non-Government sectors follow different frequency assignment procedures. The authority for a Government radio station to use a frequency within the United States and its Possessions is granted by the National Telecommunications and Information Administration (NTIA) of the Department of Commerce. Authority for use of a non-Government radio frequency is granted by the Commission. We propose to keep these differing procedures in place, but to place all applications for these shared frequencies on a public notice to be released by the Commission and on the agenda of NTIA's Frequency Assignment Subcommittee (FAS). For coordination purposes, non-Government applications will be submitted to the NTIA by the Commission's FAS representatives. Government applications will be submitted to the Commission's FAS representative by NTIA.

3. We are proposing a channeling plan in an attempt to guide efficient use of the new fixed bands. The plan would allocate, for point-to-point use, sixteen 25 kHz channel pairs, four 50 kHz pairs, six 100 kHz pairs, and nine 200 kHz pairs. We propose equal access to all channels by Government and non-Government users. We also request comment on whether there is a need for point-to-multipoint (multiple address) systems that should be satisfied in this allocation.

4. We are proposing standards for transmitters and antennas which we believe will provide efficient low-capacity point-to-point communications in the new fixed bands. These standards are similar to those currently used in private operational fixed bands. We are not proposing receiver standards; however, we note that NTIA specifies certain technical criteria for receivers intended for Government use.

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. This proceeding suggests a proposal which may significantly impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, public comment is requested on the initial regulatory flexibility analysis set out 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 propose no new or modified information collection requirement on the public.

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 May 4, 1987, and reply comments on or before June 3, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Ordering Clause

9. This action is taken pursuant to 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 332.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–7894 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 84–511; RM–4685]

Radio Broadcasting Services; Table of Assignments; Payson, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document denies a petition filed by Vicki L. Young, proposing to allot Class C FM Channel 248 to Payson, Utah for failure to provide a technical showing, regarding an available site for provision of city grade service. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 84–511 adopted March 13, 1987, and released April 2, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Mark N. Lipp,

Chief, Alloctions Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–7896 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 87–71, RM–5677]

Radio Broadcasting Services; Table of Assignments; Hartford, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Timothy Dodge proposing the allotment of Channel 282A to Hartford, Vermont, as that community's first FM service. Canadian concurrence is required.

DATES: Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Timothy Dodge, Harvest Broadcasting Services, BOX 105FM, Hinsdale, NH 03451 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–71, adopted March 2, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW. Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–7897 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 87–69, RM–5652]

Television Broadcasting Services; Table of Assignments; Provo, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Provo Television, Inc., proposing the assignment of UHF Television Channel 32 to Provo, Utah, as that community's second commercial television service.

DATES: Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Aaron Shainis, Esquire, Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–69, adopted March 13, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–7898 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 87–70, RM–5640]

Television Broadcasting Services; Table of Assignments; Olympia, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Hawks Prairie TV Corporation, proposing the assignment of UHF Television Channel 67 to Olympia, as that community's first local commerical television service. Canadian concurrence is required.

DATES: Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: B. Jay Baraff, Exquire, Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–70, adopted March 13, 1987, and released April 2, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contract.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–7899 Filed 4–8–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87–58, RM–5408, 5464]

Radio Broadcasting Services; Oxford and New Albany, MS

AGENCY: Federal Communications Commission.

ACTION: Propsed rule.

SUMMARY: This document requests comments on two petitions for rule making. The petitions are mutally exclusive. Oxford Radio, Inc. requests the substitution of FM Channel 294C2 for 296A at Oxford, Mississippi, and modification of the license of Station WKLJ (FM), Channel 296A, to reflect Channel 294C2. A site restriction 11.7 kilometers west of the community is required to accommodate the substitution. WTMX, Inc. proposes the substitution of Channel 294C2 for 292A at New Albany, Mississippi, and modification of its license to reflect the higher class channel. A site restriction 7.2 kilometers southeast of the community is necessary for this allotment. The allotment of Channel 294C2 at New Albany is also contingent on the approval of an application (BPH8605191IC) filed by Station WKTA(FM), McKenzie, Tennessee, to relocate its transmitter. At present, the proposal for a class C2 channel at New Albany would be short spaced to the 16 kilometer buffer zone of Station WKTA(FM). This proposal could provide a second wide area coverage station of Oxford or New Albany, Mississippi.

DATES: Comments must be filed on or before May 18, 1987, and reply comments on or before June 2, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554 In addition to filing commens with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

James J. Popham, Riley M. Murphey, Hardy & Popham, 700 Camp Street, New Orleans, LA 70130–3702, (counsel for Oxford Radio, Inc.)

Richard J. Hayes, Jr., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, VA 22553, (counsel for WTMX, Inc.)

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–58, adopted February 10, 1987, and released March 27, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing premissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–7895 Filed 4–8–87; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 52, No. 68
Thursday, April 9, 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

Forest Service

Highway 88 Future Recreation Use Determination; Eldorado National Forest, El Dorado, Amador, and Alpine Counties, CA; Environmental Impact Statement; Withdrawal of Draft Environmental Impact Statement

The Eldorado National Forest Draft Environmental Impact Statement for the Highway 88 Future Recreation Use Determination is being withdrawn for further consideration.

This rescinds the Notice of Availability published in the **Federal Register** of January 30, 1987 (52 FR 3050) as amended March 5, 1987 (52 FR 6833).

For further information contact: Glenn Gottschall, Amador District Ranger, Eldorado National Forest, Star Route 3, Highway 88, Pioneer, California 95666; telephone (209) 295–4251.

Dated: April 3, 1987.

Jerald N. Hutchins,

Forest Supervisor.

[FR Doc. 87–7870 Filed 4–8–87; 8:45 am]

BILLING CODE 3410–11–M

Office of the Secretary

National Plant Genetic Resources Board; Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: May 6–7, 1987.

Time: 8:30 a.m.–5 p.m., May 6. 8:30 a.m.–5 p.m., May 7.

Place: Room 104–A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: C.F. Murphy, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, Room 239, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344–1560.

Done at Beltsville, Maryland, this 24th day of March 1987.

Charles F. Murphy,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 87–7939 Filed 4–8–87; 8:45 am]

BILLING CODE 3410–03–M

Soil Conservation Service

East and Middle Forks of Massac Creek Watershed, KY; Environmental Statement; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the East and Middle Forks of Massac Creek Watershed, McCracken County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Allan Heard, Assistant State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606–233–2747.

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, Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned action is to install conservation practices on approximately 3,800 acres of excessively eroding cropland that will remain in cultivation and 40 acres of excessively eroding cropland that will be converted to permanent vegetative cover. This planned action will reduce upland erosion and downstream sedimentation and pollution.

The 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 Mr. Allan Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—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: April 2, 1987.

Randall W. Giessler,

State Conservationist.

[FR Doc. 87–7852 Filed 4–8–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation (SIPP)—1985 Panel Wave 8; Employer Feasibility Test.

Form Number: Agency—SIPP–5814(x), SIPP–5815(x), SIPP–5816, SIPP–5817; OMB—0607–0425.

Type of Request: Revision of a currently approved collection.

Burden: 1,600 respondents; 189,610 reporting hours.

Needs and Uses: The objective of this survey is to test the feasibility of having SIPP respondents sign a release form and having employers provide the Census Bureau with information on employer contributions to the respondents medical insurance plans, life insurance plans and retirement plans.

Affected Public: Individuals or households, state or local governments, farms, businesses or other for-profit institutions; Federal agencies or employees, non-profit institutions, small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: John Griffin, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffin, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: April 1, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–7968 Filed 4–8–87; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

Export Trade Certificate of Review; Notice of Application for Amendment to Export Trade Certificate of Review

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 84–A0033." The OETCA has received the following application for an amendment to Export Trade Certificate of Review #84–00033 which was issued on December 31, 1984 and published in the **Federal Register** on January 7, 1985 (50 FR 871).

Summary of Application

Applicant: International Continental Agri-Tech, Inc.; Route 2, Box 8–A, Florence, Mississippi 39073

Application #: 84–A0033

Date Deemed Submitted: March 26, 1987.

Members (in addition to applicant): Mr. R.S. Norsworthy of Florence, Mississippi.

Amendment to Export Trade and Members

The Applicant seeks to amend its certificate to change its Export Trade to "All Products". In addition, because Mr. G.F. Corcoran has withdrawn from the Applicant as a Member, the Applicant seeks an amendment to delete this name from the certificate.

Dated: April 2, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87–7857 Filed 4–8–87; 8:45 am]

BILLING CODE 3510–DR–M

[A–401–004]

Carton-Closing Staples and Staple Machines From Sweden Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumpting duty administrative review.

SUMMARY: In response to a request by the respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on carton-closing staples and staple machines from Sweden. The review covers two manufacturer/exporters of this merchandise to the United States and generally the period December 1, 1983 through January 25, 1985. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Katherine Glover or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On December 20, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 38250) an antidumping duty order on carton-closing staples and staple machines from Sweden. Two respondents, Josef Kihlberg AB and Grytgols Bruks AB, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on February 12, 1986 (51 FR 5219). The Department has now conducted that administrative

review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain carton-closing staples in strip form and certain non-automatic carton-closing staple machines. Carton-closing staples are U-shaped wide crown fastening devices used to secure and close the flaps of corrugated paperboard cartons. They generally have crown widths of 1¼ inches or more, and cross-sectional dimensions vary from .037—.040 inches by .074.—.092 inches. The staples are made of steel, most often copper-coated or galvanized.

Non-automatic wide crown carton-closing staple machines use the wide crown staples described above and can be divided into two categories, hand-held top closing staple machines and free-standing bottom closing machines.

Such staples and staple machines are currently classifiable under items 646.2000 and 662.2065, respectively, of the Tariff Schedules of the United States Annotated.

The review covers two manufacturer/exporters, Josef Kihlberg AB and Grytgols Bruks AB, of certain carton-closing staples and staple machines from Sweden and the periods December 1, 1983 through November 30, 1984 and December 1, 1983 through January 25, 1985, respectively.

United States Price

In calculating United States price for Kihlberg, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and exporter's sales price were based on the packed ex-factory, ex-warehouse, or f.o.b. price to unrelated purchasers in the United States. We made adjustments, where applicable, for ocean freight, U.S. and Swedish inland freight, marine insurance, brokerage fees, packing, U.S. customs duties, selling expenses, and credit expenses.

In calculating United States price for Grytgols Bruks, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed c.i.f. price to unrelated purchasers in the United States. We made adjustments, where applicable, for ocean freight, inland freight, marine insurance, and U.S. import duties. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, to provide a basis of comparison for Josef Kihlberg and Grytgols Bruks since sufficient quantities of such or similar merchandise were sold in the home market during the periods of review.

Home market price was based on the packed, ex-factory price to unrelated purchasers in the home market. Where applicable, we made adjustments for quantity discounts, credit expenses, packing and differences in the physical characteristics of the merchandise. We made further adjustments, where applicable, for indirect selling expenses in ESP calculations. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Josef Kihlberg AB	12/83-11/84	
Staples		.6
Staple Machines		6.0
Grylgols Bruks AB	12/83-1/25/85	
Staples		0

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication.

The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act and based on the above margins, no cash deposit of estimated antidumping duties shall be required for shipments by Grytgols Bruks AB. Because we have already published the final results of a review for a later period for Josef Kihlberg, the rate of .7 percent on staple machines established in the final results of that review (52 FR 9321) shall be required for shipments by Josef Kihlberg AB. Since the rate on staples was *de minimis* in that review, no cash deposit of estimated antidumping duties shall be required for shipments of staples by Josef Kihlberg AB.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative review, whose first shipments occurred after November 30, 1985 and who is unrelated to either a reviewed firm or any other previously reviewed firm, a cash deposit of .7 percent on staple machines established in the final results of the earlier review shall be required. No cash deposit of antidumping duties shall be required for shipments of carton-closing staples.

These deposit requirements are effective for all shipments of Swedish carton-closing staples and staple machines entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: April 2, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-7969 Filed 4-8-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-016]

Ferrite Cores (of the Type Used in Consumer Electronic Products) From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: In response to requests by three manufacturers and/or exporters, the Department of Commerce has conducted an administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan. The review covers three manufacturers and/or exporters of this merchandise and various periods from March 1, 1983 through February 28, 1986. The review indicates the existence of dumping margins for some of the firms during the period.

As a result of the review, the Department intends to revoke the

antidumping finding with respect to Sony Corporation and Tohoku Metal Industries.

Interested parties are invited to comment on these preliminary results and intent to revoke in part.

EFFECTIVE DATE: April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222/2923.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 31311) a tentative determination to revoke in part the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan (36 FR 4877, March 13, 1971) for Sony Corporation and Tohoku Metal Industries. On October 31, 1984, the Department published in the **Federal Register** (49 FR 43737) the final results of its last administrative review of the antidumping finding. We began this review of the finding under our old regulations. After the promulgation of our new regulations, three manufacturers and/or exporters requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published notices of initiation on March 14 (51 FR 8862) and April 18, 1986 (51 fR 13273).

Scope of the Review

Imports covered by the review are magnetically soft ferrite magnets which are usually wound with wire. The merchandise is magnetized with the induction of electric current and is of the type commonly used as components in consumer electronic products such as household television receivers, projection television sets, radios, stereos and high fidelity radio systems, automobile radios, electronic home computers, etc. Ferrite cores are currently classifiable under item 535.1240 of the Tariff Schedules of the United States Annotated.

The review covers three manufacturers and/or exporters of Japanese ferrite cores and various periods from March 1, 1983 through February 28, 1986.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act") as appropriate. Purchase price was based on the f.o.b. delivered price to the first unrelated purchaser in the United States. ESP was based on the c.i.f. packed delivered price to the first unrelated purchaser in the United States. We made adjustments, where applicable, for U.S. and foreign inland freight, wharfage and "B" charges (which include Japanese customs clearance fee, measurement fee and marking fee) ocean freight, marine insurance, U.S. customs duties, brokerage charges, and in ESP calculations, the U.S. subsidiary's selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the delivered packed price to unrelated purchasers. We made adjustments where applicable, for inland freight and insurance. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Intent To Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/ exporter	Time period	Margin (Percent)
Fuji Electro-chemical Co., Ltd.	3/1/83-10/31-84	0
.....	3/1/85-2/28/86	1.08
Sony Corporation	3/1/84-8/6/84	[1] 0
Tohoku Metal Industries	3/1/83-8/6/84	[1] 28.00

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results and intent to revoke in part within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments from the remaining manufacturers and/or exporters not covered by this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for each of those firms (49 FR 43737, October 31, 1984).

As a result of our review, we intend to revoke the finding on Japanese ferrite cores (of the type used in consumer electronic products) manufactured and/or exported by Sony Corporation and Tohoku Metal Industries.

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after Feburary 28, 1986 and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 1.08 percent shall be required. These deposit requirements are effective for all shipments of Japanese ferrite cores (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, intent to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54) of the Commerce Regulations (19 CFR 353.53a, 353.54).

Dated: April 3, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-7970 Filed 4-8-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-014]

Tuners (of the Type Used in Consumer Electronic Products) From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by three manufacturers and/or exporters, the Department of Commerce has conducted an administrative review of the antidumping finding on tuners (of the type used in consumer electronic products) from Japan. The review covers three manufacturers and/or exporters of this merchandise to the United States and generally the period December 1, 1982 through November 30, 1984. There were no known shipments of this merchandise to the United States by the three firms during the period, and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 5478) the final results of its last administrative review of the antidumping finding on tuners (of the type used in consumer electronic products) from Japan. We began this review of the finding under our old regulations. After the promulgation of our new regulations, three manufacturers and/or exporters requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation on May 30, 1986 (51 FR 19580). As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of tuners (of the type used in consumer electronic products) consisting primarily of television receiver tuners and tuners used in radio receivers such as household radios, stereo and high fidelity radio systems, and automobile radios. They are virtually all in modular form, aligned and ready for simple assembly into the consumer electronic product for which they were designed. The term "consumer electronic products" includes television sets, radios, and other electronic products of the type commonly bought at retail by household consumers, whether or not used in or around the household. Excluded are complete stereophonic tuners which are consumer products themselves, but not excluded are modular-type stereophonic tuners. Tuners covered by the finding are currently classifiable under items 685.0200 and 685.3277 of the Tariff Schedules of the United States Annotated.

The review covers three manufacturers and/or exporters of Japanese tuners to the United States and generally the period December 1, 1982 through November 30, 1984. There were no known shipments of this merchandise to the United States by the three firms during the period, and there are no known unliquidated entries.

Preliminary Results of Review

As a resule of our review, we preliminarily determine that the following margins exist during the periods indicated:

Manufacturer/exporter	Time period	Margin (percent)
Marubeni Corp.	9/01/84-11/30/84	[1]23.66
Murata Manufacturing Co., Ltd.	9/01/84-11/30/84	[1] 1.9
Toa Electric Co., Ltd.	12/01/82-11/30/84	[1] 1.9

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, in accordance with section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms. The above margins do not change the current rates for cash deposits of antidumping duties for new exporters. These deposit requirements are effective for all shipments of Japanese tuners (of the type used in consumer electronic products) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: April 2, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-7971 Filed 4-8-87; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Modification of Permits; Theater of the Sea (P92, and P92B); Modification to Permits Numbered 69 and 326

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permits numbered 69 and 326 issued to Theater of the Sea, Inc., P.O. Box 407, Islamorada, Florida 33036 are modified. Permit No. 69 was issued on January 15 1975, (40 FR 4173), is modified by adding the following:

Section B.5

5. The Holder is authorized to conduct a human/dolphin diving program as described in the modification request. This modification is subject to periodic review by the Assistant Administrator for Fisheries and can be revoked at any time.

Section B.6

6. The Holder shall submit a quarterly report, listing the number of human/dolphin dives, any behavioral modifications of the animals, and any health related problems. This report should be submitted to the Office of Protected Species and Habitat Conservation, National Marine Fisheries

Service, Department of Commerce, Washington, DC 20235.

Permit No. 326 issued on April 10 1981, (46 FR 22251), as modified on August 29, 1983 (48 FR 39112), is further modified by adding the following:

Section B.4

4. The Holder is authorized to conduct a human/dolphin diving program as described in the modification request. This modification is subject to periodic review by the Assistant Administrator for Fisheries and can be revoked at any time.

Section B.5

5. The Holder shall submit a quarterly report, listing the number of human/dolphin dives, any behavioral modifications of the animals, and any health related problems. This report should be submitted to the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Department of Commerce, Washington, DC 20235.

This modification became effective on April 1, 1987.

Documents submitted in connection with the above modification are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: April 1, 1987.

Nancy M. Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87-7736 Filed 4-8-87; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Coastal. Migratory Pelagic (Mackerel) Advisory Panel, April 15, 1987, to review the report of the Council's Stock Assessment Panel to recommend levels of recretional and commercial harvest of king and Spanish Mackerel within the range of acceptable biological catch. The meeting will be held at the Ramada Inn Hotel, 5303 West Kennedy Boulevard, Tampa, Florida. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida; telephone: (813) 228-2815.

Dated: April 3, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87-7922 Filed 4-8-87; 8:45 am]

BILLING CODE 3510-22-M

Permits; Foreign fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235 or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 SW First Avenue, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274-4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-673-5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register.** The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1987 have been received from the Governments shown below.

Dated: April 3, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA	Gulf of Alaska.	North Pacific.
NWA	Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA	Snails (Bering Sea).	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support
2	Processing and other support only
3	Other support only
*	Vessel(s) in support of U.S. vessels (Joint Venture)
**	Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities.

Joint Venture

The Government of Japan has submitted an application for a squid joint venture in the NWA fishery with the BANSHU MARU NO. 6 and the BANSHU MARU NO. 7. The request is

for *Illex*, 1,000 mt and *Loligo*, 1,500 mt. The designated American partner is Point Judith Fishermen's Cooperative Association, Inc., Narragansett, RI.

[FR Doc. 87-7923 Filed 4-8-87; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Deduction in Charges of Certain Cotton Textile Products Produced or Manufactured in the Dominican Republic

April 6, 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, and the President's February 20, 1986 announcement of a Special Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs to be effective on April 10, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

Background

On December 30, 1986 a notice was published in the **Federal Register** (51 FR 47043) which establishes import restraint limits for certain cotton textile products in Category 340, produced or manufactured in the Dominican Republic and exported during the period which began on December 1, 1986 and extends through May 31, 1987.

A further notice was published in the **Federal Register** on March 4, 1987 (52 FR 6595) which establishes guaranteeed access levels for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States, including Category 340.

During consultations held on March 10, 1987 between the Governments of the United States and the Dominican Republic, the United States agreed to deduct 15,633 dozen from charges made to the designated consultation level established for Category 340 for the period which began on December 1, 1986 and extends through May 31, 1987. These goods were charged to the designated consultation level because of the unavailability of proper documentation (CBI Export Declaration (Form ITA-370P)) required for entry under TSUSA 807.0010. Subsequently, documentation was provided to the U.S. Government establishing that these goods were assembled exclusively from U.S. formed and cut fabric and qualified for entry under the guaranteed access level. It was agreed, therefore, that 15,633 dozen would be charged to the guaranteed access level established for Category 340 in the directive of February 25, 1987.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct 15,633 dozen from the restraint limit established for Category 340 for the period which began on December 1, 1986 and extends through May 31, 1987. Subsequently, this same amount will be charged to the guaranteed access level established for properly certified textile products in Category 340 which are assembled in the Dominican Republic from fabric formed and cut in the United States and exported from the Dominican Republic during the period which began on December 1, 1986 and extends through May 31, 1987.

A description of the textile categories in terms of TSUSA 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), 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.

April 6, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC, 20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of December 18, 1986 between the Governments of the United States and the Dominican Republic, I request that, effective on April 10, 1987, you deduct 15,633 dozen from the charges made to the import restraint limit established in the directive of December 23, 1986 for Category 340, produced or manufactured in the Dominican Republic and exported during the period which began on December 1, 1986 and extends through May 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

This letter will be published in the Federal Register.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-7966 Filed 4-8-87; 8:45 am]
BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

April 6, 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 April 9, 1987. For further information contact Janet Heinzen, 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) 535-6736. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On May 28, 1986 a notice was published in the **Federal Register** (51 FR 19249) which establishes import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1986 and extends through May 31, 1987. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 and at the request of the Government of Sri Lanka, swing is being applied to the restraint limit previously established for cotton textile products in Category 336.

The limit for Category 342 is being reduced to account for the amount of swing applied to Category 336.

Accordingly, in the letter published below, the Chairman fo the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the restraint limits previously established for Categories 336 and 342.

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 44607), 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).

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.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 6, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on May 22, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1986 and extends through May 31, 1987.

Effective on April 9, 1987, the directive of May 22, 1986 is further amended to include the following adjusted limits to the previously established restraint limits for cotton textile products in Categories 336 and 342, as profided under the terms of the bilateral agreement of May 10, 1983 [1]:

Category	Adjusted 12-mo limit [1]
336	71,461 dozen.
342	180,506 dozen.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1986.

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. 87-7967 Filed 4-8-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The provisions of the bilateral agreement provide, in part, that: (1) Specific limits may be exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable limit; and (3) administrative arrangements and adjustments may be made to resolve minor problems arising in the implementation of the agreement.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Proposed Additions and Deletions; Correction

In FR Doc. 87-7054 appearing on page 10251 in the issue of Tuesday, March 31, 1987, make the following correction:

In the third column under services, the entry which now reads "Commissary Shelf Stocking and Custodial, Columbia Air Force Base, Mississippi", should read "Commissary Warehousing Service, Columbus Air Force Base, Mississippi".

Because of this change, the time for receipt of comments on the proposed deletion of this service is extended until May 11, 1987.

E.R. Alley,

Acting Executive Director.

[FR Doc. 87-7906 Filed 4-8-87; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

April 3, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Airships will meet at the Pentagon, Washington, DC, Room 5D982, on May 5 and 6, 1987, from 8:00 a.m. to 5:00 p.m. each day.

The purpose of the meeting is to review, discuss and evaluate the suitability of airships to perform certain Air Force roles and missions.

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 202-697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-7867 Filed 4-8-87; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

April 3, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Space-Based Radar will conduct a meeting in Colorado Springs, CO on May 6-7, 1987, from 8:00 a.m. to 5:00 p.m. each day.

The purpose of this meeting is to receive briefings on and to discuss requirements for a space-based radar system. These meetings are being held to prepare Board members to advise senior Air Force personnel on appropriate means of achieving stated 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. 87-7942 Filed 4-8-87; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meetings:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 27 April 1987.

Time of Meeting: 0900-1700 hours.

Place: Headquarters, U.S. Army Strategic Defense Command, Research Park, Huntsville, Alabama.

AGENDA: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for briefings and discussions on technology transfer of SDIO to the tactical Army. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87-7943 Filed 4-8-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Vocational Education Indian Hawaiian Natives; Applications for New Awards for FY 1988

Notice Inviting Applications for New Awards under the Vocational Education Indian and Hawaiian Natives Program for use in fiscal year 1988 (CFDA No. 84.101A). This application notice is for Indian tribes only and does not apply to organizations for Hawaiian natives.

Purpose: Provides financial support to Indian tribes to plan, conduct, and administer projects or portions of projects that are authorized by and consistent with the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.*).

Deadline for Transmittal of Applications: July 15, 1987.

Applications Available: April 17, 1987.

Available Funds Anticipated: For fiscal year 1987, the Congress appropriated $10,414,352 for Indian vocational education programs for use in fiscal year 1988. Of that amount, approximately $7,129,764 is for new awards.

Estimated Range of Awards: $50,000 to $500,000.

Estimated Average Size of Awards: $220,000.

Estimated Number of Awards: 32.

Project Period: Up to 36 months.

Applicable Regulations: Regulations applicable to this program include the following: (a) The regulations in 34 CFR Part 410; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

Criteria for Evaluating Applications: The Secretary assigns the fifteen points, reserved in 34 CFR 410.30(b), as follows: five points to the Selection Criterion (a)—Need—in 34 CFR 410.31(a) for a total of 20 points for that criterion; five points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 410.31(b) for a total of 25 points for that criterion; and five points to the Selection Criterion (c)—Quality of Key Personnel—in 34 CFR 410.31(c) for a total of 15 points for that criterion.

For Applications or Information Contact: Harvey Thiel or Timothy Halnon, Special Programs Branch, Division of Innovation and Development, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 519, Reporters Building, Washington, DC 20202-5516. Telephone (202) 732-2380 or 732-2379.

Program Authority: 20 U.S.C. 2313.

Dated: April 1, 1987.

John G. Pucciano,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. 87-7941 Filed 4-8-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

[Notice No. 2]

Proposed Establishment of Federally Funded Research and Development Center (FFRDC)

SUMMARY: In accordance with paragraph 6.b.(2) of the Office of Federal Procurement Policy, Policy Letter No. 84-1, the Department of Energy (DOE) announces its intention to establish the Continuous Electron Beam Accelerator Facility (CEBAF) located in Newport News, Virginia, as a Federally Funded Research and Development Center (FFRDC). The facility will include a continuous beam recirculating linear accelerator of approximately one mile circumference. The accelerator will be capable of providing high-duty-factor electron beams throughout the energy range from 0.5 to 4.0 billion electron volts. The CEBAF laboratory will be a center for basic research and training related to nuclear structure and the accelerator techniques utilized to carry out that research. Related theoretical studies will be conducted, and institutional relationships will be developed to assure strong involvement of the scientific community. The unique capabilities of CEBAF will serve as a focus for research programs of the U.S. and the International scientific community for many years. The CEBAF laboratory and accelerator construction project is the highest priority new research facility in the U.S. nuclear physics program. CEBAF will have the only accelerator facility in the world capable of producing electron beams which meet the criteria of energy, duty factor, and beam intensity necessary to study minute details of nuclear structure, and thus provide new scientific knowledge about the underlying quark-gluon substructure in nuclear matter. Based upon the research plans and scope of this laboratory, the DOE has determined that the CEBAF laboratory should be designated as FFRDC.

FOR FURTHER INFORMATION CONTACT: Dr. David L. Hendrie, Director, Division of Nuclear Physics, Office of Energy Research, ER-23, U.S. Department of Energy, Washington, DC 20545.

DATE: Any comments on this proposed action must be received on or before May 11, 1987.

ADDRESS: Address comments to Dr. David L. Hendrie at the address listed above.

Issued in Washington, DC, on April 3, 1987.

Ira M. Adler,

Deputy Director for Management Office of Energy Research.

[FR Doc. 87-7838 Filed 4-8-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-14-NG]

Natural Gas Imports; American Central Gas Pipeline Corp. Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of reciept on March 18, 1987, of an application from American Central Gas Pipeline Corporation (American Central) for blanket authorization to import up to 500,000 Mcf per day of Canadian natural gas, up to a maximum of 400 Bcf, over a two-year period beginning on the date of first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers including pipelines, local distribution companies and electric utilities, as well as agricultural, commercial and industrial end-users. American Central would import gas for its own account as well as for the accounts of its U.S. purchaser clients. The specific terms of each import and sale would be negotiated on an individual basis, including price and volumes. American Central intends to utilize existing pipeline facilities for transportation of the volumes imported. The firm proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

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: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than May 11, 1987.

FOR FURTHER INFORMATION CONTACT:
Tom Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590
Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Departmnt 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 response on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserteed that the 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 this proceeding and to have written comments considered as a 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 commnents must meet the requiremets 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., May 11, 1987.

The Administrator intends to develop a decisional record on the application through responses to the 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 trial-type hearing. 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 on 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 an 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 Central's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, 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 31, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-7964 Filed 4-8-87; 8:45 am]

BILLING CODE 6450-01-M

Application to Import Natural Gas From Canada; Suncor Inc.

[ERA Docket No. 87-13-NG]

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term, interruptible sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 16, 1987, of an application filed by Suncor Inc., (Suncor) for a blanket authorization to import from Canada up to 50 MMcf of natural gas per day and a maximum of 36.5 Bcf for a term of two years beginning on the later of April 1, 1987, the date that interruptible transportation service becomes available on the facilities of Northern Border Pipeline Company (Northern Border), or the date of ERA approval. Suncor, a Canadian corporation with its principal office in Toronto, Canada, is an affiliate of Sun Company, Inc., of Radnor, Pennsylvania, and Ontario Energy Resources Ltd., a corporation indirectly owned by the Province of Ontario, Canada.

Under the proposed import arrangement, the gas to be imported would be owned or controlled by Suncor and would be sold on a short-term, interruptable basis to local gas distribution companies serving the Midwestern States. The proposed import would enter the United states at a point on the international boundary near Port of Morgan, Montana, and would be transported through the facilities of Northern Border, as well as other interstates pipelines serving the Midwestern states.

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, or notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than May 11, 1987.

FOR FURTHER INFORMATION CONTACT:
John Glynn, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9482
Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, 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 proposed 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 this proceeding and to have written comments considered as a 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., May 11, 1987.

The Administrator intends to develop a decisional record on the application through responses to the 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 trail-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 trail-type hearing must show that there are factual issues genuinely in dispute that are relevent and material to a decision and that a trail-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 Suncor's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, 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 31, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–7965 Filed 4–8–87; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information: (1) The sponsor of the collection (DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) a brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before May 11, 1987. Last notice published Friday, April 3, 1987.

ADDRESS: Copies of the materials submitted to OMB may be obtained from Mr. Gross at the address below. Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. For comments relating to FERC data collections, send comments to the Attention of Mr. Rick Otis. Comments to all other DOE data collections should be sent to the Attention of Mr. Vartkes Broussalian. (Copies of your comments also should be addressed to Mr. Gross at the address below.)

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2308.

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB desk officer of your intent as early as possible.

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–11
3. 1902–0032
4. Natural Gas Pipeline Company Monthly Statement
5. Extension
6. Monthly
7. Mandatory
8. Business or other for profit
9. 46 respondents
10. 552 responses
11. 4416 hours
12. The purpose of this monthly statement is to develop statistics and studies in investigating the resonableness of the various revenue and cost of service items claimed in section 7 certificates and sections 4 and 5 rate filings. (FERC Form –11)

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–559
3. 1902–0036
4. Independent Producer Rate Change or Initial Billing Statement
5. Extension
6. On Occasion
7. Mandatory
8. Business or other profit
9. 100 respondents
10. 1644 responses
11. 822 hours
12. FERC–559 is a form required by the Commission for large independent

natural gas producers to file initial billing statements, rate increases, or certain blanket affidavits.

Statutory Authority: Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275– Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, March 31, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87–7839 Filed 4–8–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 8596–001 et al.]

Hydroelectric Applications (Jason M. Hines et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Minor License.

b. Project No.: 8596–001.

c. Date Filed: August 29, 1986.

d. Applicant: Jason M. Hines.

e. Name of Project: Dublin Hydro.

f. Location: On the Stanley Brook in Cheshire County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Jason M. Hines, P.O. Box 76, Amherst, NH 03031, (603) 654–2678.

i. Comment Date: May 8, 1987.

j. Description of Project: The proposed project would consist of: (1) Reconstruction of a 17.5-foot-high, 238-foot-long concrete and stone masonry, gravity structure; (2) a proposed reservior with a surface area of 53 acres and a gross storage capacity of 260 acre-feet; (3) a proposed 16-foot by 20-foot reinforced concrete powerhouse housing one 150-kW turbine/generator unit; (4) a proposed 1,350-foot-long, 36-inch-diameter steel penstock; and (5) a proposed 150-foot-long by 15-foot-wide tailrace. The applicant estimates with the total rated capacity of 150-kW an average annual energy generation of 600,000 kWh. Existing facilities are owned by Mitchell Winigmann.

k. Purpose of Project: Project energy would be sold to Public Service of New Hampshire.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C & D1.

2 a. Type of Application: Minor License.

b. Project No.: 9049–001.

c. Date Filed: September 23, 1986.

d. Applicant: Carex Hydro.

e. Name of Project: Pioneer.

f. Location: Deckers Creek, Monongalia County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jean-Claude Leroy, c/o Hytech, P.O. Box 2306, Westover, WV 26502, (304) 292–6018.

i. Comment Date: May 8, 1987.

j. Description of Project: The proposed project would consist of: (1) A proposed reinforced concrete dam 120 feet long, 10 feet high, and incorporating an intake, weir, and sedimentation cell; (2) a proposed reservior of one-half acre surface area and 2.5 acre-feet volume at a normal maximum surface elevation of 1,289 feet msl; (3) a proposed 42-inch-diameter steel penstock 4,200 feet long; (4) a proposed powerhouse 30 feet wide, 45 feet long, and 20 feet high enclosing two turbine-generators of 1,500 kW combined capacity; (5) a 12.5-kV transmission line 300 feet long; and (6) appurtenant facilities.

The net hydraulic head would be 233 feet. The estimated annual energy production is 5.3 GWh. Project power would be sold to Monongahela Power Company. the existing site is owned by Greer Steel Company.

k. This notice also consists of the following standard Paragraphs: A3, A9, B, C & D1.

3 a. Type of Application: Preliminary Permit.

b. Project No: 10150–000.

c. Date Filed: October 30, 1986.

d. Applicant: Skykomish River Hydro.

e. Name of Project: Trout Creek.

f. Location: On Trout Creek, a tributary of the North Fork Skykomish River, within the Snoqualmie-Mt. Baker National Forest in Snohomish County, Washington near the town of Index.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, President, 12122 196th NE., Redmond, WA 98052; (206) 885–3986.

i. Comment Date: May 8, 1987.

j. Description of Project: The proposed project would consist of: (1) Three 3-foot-high, 200-foot-long diversion dams; (2) two pipelines; (3) a 30-inch-diameter, 26,600-foot-long penstock; (4) a powerhouse containing a single generating unit with an installed capacity of 4,900 kW, producing approximately 26.60 GWh of energy annually; (5) a tailrace; (6) a 9-mile-long, 115-kV transmission line tying into an existing Puget Power and Light Company line. No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $40,000.

k. Purpose of Project: Project power would be sold to Puget Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

4 a. Type of Application: Preliminary Permit.

b. Project No: 10240–000.

c. Date Filed: January 12, 1987.

d. Applicant: Last Chance Hydroelectric Company.

e. Name of Project: Last Chance Diversion.

f. Location: On Bear River in Caribou County, Idaho near the town of Grace T.9S. R.41E., sec. 30, SE ¼ and sec. 31, NE ¼.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Jordan Walker, P.O. Box N, Manti, Utah 84642, (801) 835–0202.

Mr. Mike Graham, P.O. Box N, Manti, UT 84642, (801) 835–0202.

i. Comment Date: May 11, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 35-foot-high concrete dam at an elevation of 5,608 feet, owned by the Last Chance Irrigation Company; (2) an existing 8-foot-diameter, 1,500-foot-long buried penstock; (3) a powerhouse containing three generating units with an installed capacity of 2,100 kW, producing approximately 9,198,000 kwh of energy annually; and (4) an existing 3,000-foot-long, 2.5-kV Utah Power and Light Company's transmission line. No access road will be needed to conduct the studies. The Applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $5,000.

The proposed project would be located on lands owned by the Last Chance Irrigation Company.

k. Purpose of Project: Project power would be sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

5 a. Type of Application: Preliminary Permit.

b. Project No: 10242–000.

c. Date Filed: January 12, 1987.

d. Applicant: Marsh Valley Hydroelectric Company.

e. Name of Project: Marsh Valley Diversion.

f. Location: On Portneuf River in Bannock County, Idaho near the town of Lava Hot Springs, T.9S., R.37E., sec. 21 and sec. 22, W ½.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jordan Walker, or Mr. Mike Graham, P.O. Box N, Manti, Utah 84642 (801) 835–0202.

i. Comment Date: May 8, 1987.

j. Description of Project: The proposed project would consist of: (1) The existing 21-foot-high Portneuf-Marsh Valley Canal dam at elevation 4,908 feet; (2) the existing 10-foot-wide, 5-foot-deep Portneuf-Marsh Valley canal to be gated; (3) a 60-inch-diameter, 500-foot-long buried penstock; (4) a powerhouse containing two generating units with a total installed capacity of 1,000 kW, producing approximately 4,000,000 kWh of energy annually; and (5) an existing 3,000-foot-long, 2.5-kV Utah Power and Light Company's transmission line. No access road will be needed to conduct the studies. The Applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $5,000.

The proposed project would be located on lands owned by the Marsh Valley Irrigation District and private parties.

k. Purpose of Project: Project power would be sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 10245–000.

c. Date Filed: January 12, 1987.

d. Applicant: Grace Dam Hydroelectric Company.

e. Name of Project: Grace Dam Diversion.

f. Location: On Bear River in Caribou County, Idaho near the town of Grace. T.10S., R.40E., section 1, NE ¼.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Mr. Jordan R. Walker, P.O. Box N, Manti, UT 84642, (801) 835–0202.

Mr. Mike Graham, P.O. Box N, Manti, UT, 84602, (801) 835–0202.

i. Comment Date: May 11, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 35-foot-high concrete dam, owned by Utah Power and Light Company at an elevation of 5,553 feet; (2) an 8-foot-diameter, 50-foot-long buried penstock; (3) a powerhouse containing three generating units with an installed capacity of 2,000 kW, producing approximately 8,760,000 kWh of energy annually; and (4) an existing 3,000-foot-long, 2.5-kV Utah Power and Light Company transmission line. No access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $5,000.

The proposed project will be located on lands owned by Utah Power and Light Company.

k. Purpose of Project: Project power will be sold to Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 10255–000.

c. Date Filed: January 20, 1987.

d. Applicant: Alternative Energy Management, Inc.

e. Name of Project: Perry Hydro Project.

f. Location: On the Delaware River near Topeka, Jefferson County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. L. Joe Hamman, AEM, Inc., P.O. Box 67151, Topeka, KS 66667, 913–272–2870.

i. Comment Date: May 11, 1987.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Perry Dam and Lake, and would consist of: (1) A new 325-foot-long steel penstock approximately 22.5 feet in diameter; (2) a new powerhouse located adjacent to and along the south side of the existing stilling basin and housing a single 5000-kW generator; (3) a proposed 8-mile-long, 34.5-kV transmission line; and (4) appurtenant facilities. Applicant estimates the average annual generation would be 14,500 MWh. All energy produced would be sold to a local utility company. Applicant estimates that the cost of the work under the tems of the preliminary permit would be $100,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 10319–000.

c. Date Filed: February 10, 1987.

d. Applicant: Barr Engineering Company.

e. Name of Project: Kettle River Dam Hydroelectric Project.

f. Location: On the Kettle River in Pine County, Minnesota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: John Dickson, Barr Engineering Company, 7803 Glenroy Road, Minneapolis, MN 55435, (612) 830–0555.

i. Comment Date: May 8, 1987

j. Description of Project: The applicant proposes to utilize an existing dam owned by the Minnesota Department of Natural Resources. The proposed project would consist of: (1) An approximately 900-foot-long dam whose components consist of two earth embankments, a sandstone masonry spillway, and a concrete and masonry powerhouse containing two generating units rated at 187 kW and 345 kW, respectively. The applicant proposes to refurbish the generating units and rehabilitate the powerhouse; (2) an existing reservoir with a surface area of 30 acres and a storage capacity of 230 acre-feet at powerpool elevation of 955.3 feet NGVD; (3) an existing 390-foot-long tailrace; (4) a proposed transmission line; and (5) appurtenant facilities. The estimated average annual energy output is 3,200,000 kWh. Applicant estimates that the cost of the work to be performed under the preliminary would be $10,000.

k. Purpose of Project: Power produced at the project would be sold to either the Minnesota Light and Power Company or the United Power Association.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application

Public notice of the filing of the initial development applicaiton, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing applicaiton for preliminary permit for a proposed project must submit the competing application itself, or a notice

of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit

Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10 and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, Federal and State agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825/ (b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance

of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 6, 1987.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7947 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-356-000, et al.]

Tampa Electric Co. et al.; Electric Rate And Corporate Regulation Filings

April 2, 1987.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Co.

[Docket No. ER87-356-000]

Take notice that on March 30, 1987, Tampa Electric Company (Tampa Electric) tendered for filing an Agreement for Interchange Service between Tampa Electric and the Utility Board of the City of Key West, Florida (Key West). The Agreement was supplemented with Service Schedules A, B, C, D, J, and X, providing for emergency, scheduled, (short-term) economy, long-term, negotiated, and extended economy interchange service, respectively.

Tampa Electric proposes an effective date of April 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Key West and the Florida Public Service Commission.

2. Southern California Edison Co.

[Docket No. ER87-351-000]

Take notice that, on March 27, 1987, Southern California Edison Company ("Edison") tendered for filing Agreement No. 1 to the Edison-Azusa Interruptible Transmission Service Agreement ("Amendment") designated Rate Schedule FERC No. 160, which has been executed by Edison and the City of Azusa, California ("Azusa"):

Amendment No. 1 to the Edison-Azusa Interruptible Transmission Service Agreement

The Amendment provides for an additional interruptible transmission service Point of Receipt at Edison's Vincent Substation 500 kV bus.

The Amendment is proposed to become effective when executed by the Parties and accepted for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Azusa.

Comment date: April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. American Electric Power Service Corp.

[Docket No. ER87-355-000]

Take notice that American Electric Power Service Corporation (AEP) on March 30, 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, and Ohio Power Company, which are all AEP affiliated operating subsidiaries (and are sometimes collectively referred to as the AEP Parties) revisions to the AEP Parties' Emergency, Economy, and Non-Displacement Energy rates. The AEP Parties have increased their Emergency Energy and Non-Displacement Power and Energy Transmission demand rates and the minimum Economy Energy transmission demand rate to a cost-supported rate of 5.75 mills per kilowatt reserved per hour. AEP has requested an effective date of March 16, 1987.

Copies of this filing were served upon the Public Service Commission of Indiana, Michigan Public Service Commission, Public Utilities Commission of Ohio, State Corporation Commission of Virginia, Public Service Commission of West Virginia and the appropriate utilities interconnected with the AEP Parties.

Comment date: April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Co.

[Docket No. ER87-345-000]

Take notice that on March 26, 1987, Boston Edison Company ("Boston Edison") of Boston, Massachusetts, tendered for filing a proposed rate schedule to memorialize a transmission transaction involving itself and Down East Peat, L.P. ("DPLP"). Boston Edison will purchase power for DPLP, a QF, and will make transmission payments to two of the utilities, Bangor Hydro-Electric Company ("Bangor Hydro") and New England Power Company ("NEP"), who are transmitting the power from the DPLP generating facility in the State of Maine to the Boston Edison system. The transmission arrangement which is the subject of Boston Edison's rate filing involves DPLP's reimbursement to Boston Edison for the direct and indirect costs related to the Bangor Hydro and NEP transmission service.

Boston Edison states that DPLP's generating unit is expected to enter service in 1990, but that required regulatory approvals should be obtained at the present time to facilitate DPLP's financing of the generating project. Boston Edison has asked the Commission to issue an order within sixty days (1) accepting the rate filing and (2) allowing the rate schedule to become effective on the commercial operation date of the DPLP generating unit.

Boston Edison states that it has served copies of this filing upon DPLP

and the Massachusetts Department of Public Utilities.

Comment date: April 16, 1987, in accordance with Standard Paragraph E at the end of this document.

5. American Electric Power Service Corp.

[Docket No. ER87-280-000]

Take notice that American Electric Power Service Corporation (AEP) on March 27 , 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Company, Ohio Power Company, and Wheeling Electric Company, which are all AEP affiliated operating subsidiaries (and are sometimes collectivley referred to as the AEP Parties), revisions to the AEP Parties' Short Term Power and Non-Displacement Energy rates. The AEP Parties' Short Term Power demand and energy rates have been revised to "up to" $2.00 per kilowatt per week and to "up to" 110% of the out-of-pocket cost respectivley. In addition, the AEP Parties' Non-Displacement rates have been revised to a demand rate of "up to" 25 mills per kilowatthour and an energy rate of "up to" 110% of out-of-pocket cost. These rates have previously been filed by AEP and accepted for filing by FERC and will allow the AEP Parties to charge less than the cost supported charges and thereby enhance sales and an efficient supply of electricity in a competitive market. AEP has requested an effective date of January 1, 1987.

Copies of this filing were served upon the Kentucky Public Service Commission, Public Service Commission of Indiana, Michigan Public Service Commisson, Public Utilities Commission of Ohio, State Corporate Commisson of Virginia, Public Service Commission of West Virginia and the appropriate utilities interconnected with the AEP Parties.

Comment date: April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas Gas and Electric Co.

[Docket No. ER87-353-000]

Take notice that Kansas Gas and Electric Company on March 30, 1987, tendered for filing a proposed change in its FERC Electric Service Tariff No. 93. The proposed Letter of Intent specifies the amount of transmission capacity requirements for four Delivery Points for the period from June 1, 1987 through May 31, 1988.

The Letter of Intent is necessary because KPL has requested a change in the amount of transmission capacity to be reserved for KPL's use and is required by the terms of the service schedule.

Copies of this filing were served upon The Kansas Power and Light Comapny and the Kansas Corporation Commission.

Comment date: April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Central Hudson Gas & Electric Corp.

[Docket No. ER87-267-000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on March 26, 1987 tendered for filing as a supplement to its Rate Schedule FERC No. 22 a letter of agreement and notification dated February 9, 1987 between Central Hudson and New York State Electric and Gas Corporation. Central Hudson states that this letter provides for a decrease in the monthly facilities charge from $6,903.08 to $6,060.58 in accordance with Article IV.1 of its Rate Schedule FERC No. 22, an increase in the monthly Tranmsission Charge from $5,675.81 to $6,036.82 in accordance with Articles V and VI of its Rate Schedule FERC No. 22 and an increase in the annual Operation and Maintenance Charge from $3,402.53 to $3,572.66 in accordance with Article IV.2. of its Rate Schedule FERC No. 22. Central Hudson requests waiver of the notice requirement of Subsection 35.3 of the Commisson's Regulations to permit this proposed increase to become effective January 1, 1987.

Copies of filing by Central Hudson were served upon:

New York State Electic and Gas Corp. 4500 Vestal Parkway, East Binghamton, NY 13902

Comment date: April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Central Power and light Co.

Docket No. ER87-342-000

Take notice that on March 25, 1987, Central Power and Light Company ("CPL") tendered for filing a revised annual facilities charge (payable in twelve equal monthly installments) for firm transmission service to Houston Lighting & Power Company ("HL&P") pursuant to the multiyear Transmission Services Agreement Between CPL and HL&P . Under the agreement, CPL will provide firm transmission service in calendar year 1987 for 300 megawatts of power and associated energy purchased by HL&P from the City of Austin, Texas and for 400 megawatts of power and associated energy purchased by HL&P from City Public Service of San Antonio, Texas. CPL has requested an effective date of January 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been sent to the Public Utility Commission of Texas and to Houston Lighting & Power Company.

Comment date: April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Power Co.

[Docket No. ER87-352-000]

Take notice that Consumers Power Company ("Consumers Power") on March 30, 1987, tendered for filing a standard Schedule of Rates Governing Electric Transmission Service, which are proposed to supersede the rates for transmission service contained in Contract Rate TR, which were issued under authority of the order of the Federal Energy Regulatory Commission dated June, 1985 in Case No. ER85-228-001. Consumers Power states that the superseding Schedule of Rates will continue to make electric transmission service available to any neighboring utility located in its service area.

Consumers Power has also tendered for filing addendums containing superseding transmission service rates to be incorporated in the following agreements:

1. Coordinated Operating Agreement between Consumers Power and the Members of the Municipal and Cooperative Pool (MCP)—(FERC No. 53).

2. Coordinated Operating Agreement between Consumers Power and the City of Lansing—(FERC No. 49).

3. Coordinated Operating Agreement between Consumers Power and the City of Holland—(FERC No. 50).

4. Transmission Service Agreement between Consumers Power and Michigan Public Power Agency (MPPA) dated as of December 20, 1985—(FRC No. 60).

The proposed weekly rate for transmission service is $.35 per kW of billing demand at 130,000 volts, and $.46 per kW of billing demand at 46,000 volts. This compares to current TR rates of $.30 (at 138,000 volts) and $.40 (at 46,000 volts) per kW of billing demand. The proposed daily rate for transmission service is $.07 per kW of billing demand at 138,000 volts, and $.09 per kW of billing demand at 46,000 volts. This compares to current TR daily rates of $.06 mills per kW of billing demand (at 138,000 volts) and $.08 per kW of billing demand (at 46,000 volts). Consumers Power states that superseding transmission rates proposed to be incorporated in the four agreements described above are consistent with the proposed

superseding rates for Contract Rate TR. In addition, the filings propose to increase the transmission rate for Emergency Energy transactions under the three coordinated operating agreements described above from 2.5 to 2.9 mills per kilowatt hour.

Consumers Power requests that the superseding rates for electric transmission service be placed in effect on June 1, 1987.

A copy of the filing was served upon the Michigan Public Service Commission and the parties to the above-described agreements.

Comment date: April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Consumers Power Co.

[Docket No. ER87-354-000]

Take notice that Consumers Power Company ("Consumers") on March 30, 1987 tendered for filing "Consumers Power Company Service Agreement Wholesale for Resale Electric Service" (Wholesale Service Agreement); "Transmission Service Agreement Between Consumers Power Company and Southeastern Michigan Rural Electric Cooperative, Inc." (Transmission Service Agreement); and "Amendment No. 1 to Transmission Service Agreement".

The Wholesale Service Agreement supercedes and cancels three earlier agreements for service at three separate delivery points. The Wholesale Service Agreement provides for service to those three delivery points and to a new point of delivery all in the same agreement.

The Transmission Service Agreement and Amendment No. 1 thereto provide for transmission of up to 6,000 kW of electric capacity and energy purchased by Southeastern Michigan Rural Electric Cooperative, Inc. (SEMREC) from the Lansing Board of Water and Light.

Consumers states that copies of the filing were served on Southeastern Michigan Rural Electric Cooperative, Inc. and the Michigan Public Service Commission.

Comment date: April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

11. Delmarva Power & Light Co.

[Docket No. ER87-349-000]

Take notice that Delmarva Power & Light Company ("Delmarva") on March 27, 1987, tendered for filing proposed Supplement No. 1 to Supplement No. 9 to its FERC Rate Schedule No. 71. This Supplement, filed at the request of the Easton Utilities Commission and Town of Easton, Maryland ("Easton") and with Delmarva's agreement, reduces energy sales to Easton from 7-10 NW per hour of energy to 5 MW per hour. In addition, it is agreed that Delmarva's compensation for said energy will be reduced from 4.3¢ per kWhr to 3.4¢ per kWhr and that the "average cost" calculation used for the monthly fuel adjustment be replaced with one that uses "New York Harbor Contract Cargo Prices" index for No. 6, 1% sulfur oil as its basis. Copies of the filing were served upon Easton, and the Maryland Public Service Commission.

Comment Dates: April 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

12. Delmarva Power & Light Co.

[Docket No. ER87-350-000]

Take notice that Delmarva Power & Light Company ("Delmarva") on March 27, 1987, tendered for filing proposed Supplement No. 6 to its FERC Rate, Schedule No. 63. This Supplement, filed at the request of the Town of Berlin, Maryland ("Berlin") increases the miximum level of parallel generation under the provisions of the Service Agreement between Delmarva and Berlin from 2800 kW to 3600 kW. Copies of the filing were served upon Berlin and the Maryland Public Service Commission.

Comment date: April 16, 1987, in accordance with Strandard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-7946 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3033-004]

Arkansas Electric Cooperative Corporation, et al; Application for Transfer of License (Major)

April 7, 1987.

Take notice that Arkansas Electric Cooperative Corporation (AECC), Riceland Electric Cooperative, Inc., and C&L Electric Cooperative Corporation, licensee for Lock and Dam No. 2 Project, have requested that AECC be made the sole licensee for Project No. 3033. The license was issued on August 10, 1983, and would expire on August 1, 2033. The project is located on the Arkansas River in Desha and Arkansas Counties, Arkansas, and is currently under construction.

Correspondence with the applicants should be directed to: Robert M. Lyford, Staff Attorney, Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 72219, Fred Carlisle, Manager, Riceland Electric Cooperative, Inc., P.O. Box 906, Stuttgart, Arkansas 72160, and W.H. Frizzell, Manager, C&L Electric Cooperative Corporation, P.O. Drawer 9, Star City, Arkansas 71667.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before May 18, 1987.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each

representative of the applicant specified in the second paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7950 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3034-004]

Arkansas Electric Cooperative Corporation, et al.; Application for Transfer of License (Major)

April 7, 1987.

Take notice that Arkansas Electric Cooperative Corporation (AECC), Riceland Electric Cooperative, Inc., and C&L Electric Cooperative Corporation, licensee for Lock and Dam No. 3 Project, have requested that AECC be made the sole licensee for Project No. 3034. The license was issued on August 10, 1983, and would expire on August 1, 2033. The project is located on the Arkansas River in Jefferson and Lincoln Counties, Arkansas, and is currently under construction.

Correspondence with the applicants should be directed to: Robert M. Lyford, Staff Attorney, Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 72219, Fred Carlisle, Manager, Riceland Electric Cooperative, Inc., P.O. Box 906, Stuttgart, Arkansas 72160, and W. H. Frizzell, Manager, C&L Electric Cooperative Corporation, P.O. Drawer 9, Star City, Arkansas 71667.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before May 22, 1987.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST, OR "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the second paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7951 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3044-004]

Arkansas Electric Cooperative Corp. and Arkansas Valley Electric Cooperative Corp.; Application for Transfer of License (Major)

April 7, 1987.

Take notice that Arkansas Electric Cooperative Corporation (AECC), and Arkansas Valley Electric Cooperative Corporation (AVECC), licensee for Lock and Dam No. 9 Hydropower Project, have requested that AECC be made the sole licensee for Project No. 3044. The license was issued on July 20, 1983, and the project is currently under construction. The project is located on the Arkansas River in Pope and Conway Counties, Arkansas.

Correspondence with the applicants should be directed to: Robert M. Lyford, Staff Attorney, Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 72219 and Robert Agee, Manager, Arkansas Valley Electric Cooperative Corporation, P.O. Box 47, Ozark, Arkansas 72949.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before May 15, 1987.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the second paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-7952 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-272-000, et al.]

Northwest Pipeline Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP87-272-000]

April 2, 1987.

Take notice that on March 27, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-272-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate a mainline tap and appurtenant facilities necessary to tie its Moxa-Opal supply lateral to its mainline at a point south of its Muddy Creek Compressor Station, and the flexibile operation of its existing Moxa-Opal supply lateral and the downstream terminus of its existing Moxa supply trunk either as gas transmission facilities or as system supply gas facilities; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that in 1978, Northwest constructed a 12-inch supply pipeline (Moxa Trunk) to connect the Moxa Arch field to its mainline. During 1986, Northwest constructed a 16-mile, 16-inch supply lateral (Moxa-Opal Lateral) to connect the Moxa Trunk to its Opal Liquids Extraction Plant. It is further stated the Moxa-Opal lateral was designed to transport natural gas and associated liquids from the Moxa Arch gathering system to the Opal plant to provide the most effective processing of the raw gas being produced from the Moxa Arch.

Northwest avers due to the proximity of the Moxa-Opal lateral to its 22-inch Ignacio-Sumas mainline, Northwest has determined that, with only minor facility modifications, it could utilize the Moxa-Opal lateral as a partial mainline loop, occasionally, to help alleviate the

capacity constraint for volumes flowing south from Muddy Creek. Northwest estimates that such utilization would provide an additional approximately 28 MMcf/d of throughput on its mainline from Muddy Creek to Green River, and that this additional capacity would be available only on an interruptible basis since it would be contingent upon Northwest's ability to forego, from time to time, the use of the Moxa-Opal lateral as a system supply lateral.

Northwest requests certificate authorization for the construction and operation of one 12-inch mainline tap and approximately 30 feet of 12-inch pipeline to connect its 22-inch mainline with the Moxa-Opal supply lateral. Northwest states the proposed tap would be located south of the Muddy Creek Compressor Station in Lincoln County, Wyoming. Northwest further states all of the proposed facilities would be located on existing right-of-way owned by Northwest and, other thn disturbing the local pipeline cover, the proposed construction would have an insignificant environmental impact. The estimated cost of the subject facilities is approximately $99,700.

Northwest also requests that the Commission authorize the operation of the Moxa-Opal supply lateral and the terminus of the Moxa Trunk as transmission facilities, when not required to operate in their primary mode as gas supply facilities. Northwest would utilize the proposed interconnection to the mainline, the Moxa-Opal Lateral, and the terminus of the Moxa Trunk as a 15-mile loop of its mainline.

Comment date: April 20, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. K N Energy, Inc.

[Docket No. CP87-261-000]

April 3, 1987.

Take notice that on March 24, 1987, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP87-261-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations thereunder requesting authority to construct, operate and abandon certain pipeline and compression facilities all as more fully set forth in the application on file at the Commission and open for public inspection.

More specifically, K N proposes to:

(1) Abandon 21.3 miles of 4-inch and 4½-inch pipeline and 3½-inch loop segments from Buckboard Junction to near Otis, Colorado and replace with 6-inch pipeline;

(2) Abandon 2.4 miles of 4-inch pipeline near Springdale Storage Field in Colorado and replace with 6-inch pipeline;

(3) Abandon 3.8 miles of 1¼-inch pipeline near Pleasanton, Nebraska and replace with 2-inch pipeline;

(4) Abandon 5.6 miles of predominantly 6-inch pipeline near Nelson, Nebraska and replace with 4-inch pipeline;

(5) Abandon 1.2 miles of 1⅛-inch pipeline near Speed, Kansas and replace with 2-inch pipeline; and

(6) Retire three (3) 125 horsepower reciprocating compressor units and ancillary equipment located at Northport, Nebraska Compressor Station.

K N states that the estimated total cost of these projects would be approximately $1.564 million. K N further states that the facilities abandonment, construction and operation sought herein are independent of one another and are needed in order to maintain reliable service, to alleviate potential safety problems, to remove localized capacity constraints, and to enhance operating flexibility and efficiency. Finally, K N advises that no new markets are proposed and that the proposal would not significantly affect the operation of its transmission system.

Comment date: April 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP87-262-000]

April 3, 1987.

Take notice that on March 25, 1987, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87-262-000 an application pursuant to section 7(b) of the Natural Gas Act, for an order permitting and approving abandonment of the Taloga Compressor Station (Taloga) and related facilities in Morton County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle submits that the abandonment of the facilities proposed by this application are in the public interest due to depletion of gas supplies in the area and the decline of anticipated future gas production which would require that the station be in place. The facilities Taloga proposes to abandon consist of three compressor units totaling approximately 2,200 horsepower, buildings, and related facilities. Panhandle indicates that the abandonment would also result in reduced operating expenditures for labor and equipment maintenance. Taloga will be abandoned in place at an estimated cost of $30,000, upon receipt of appropriate abandonment authority from the Commission, it is stated. Panhandle further states the Elkhart Station can compress production from the vicinity of Taloga efficiently and economically.

Comment date: April 24, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Williston Basin Interstate Pipeline Company

[Docket No. CP87-253-000]

April 3, 1987.

Take notice that on March 16, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP87-253-000, an application pursuant to section 7(c) of the Natural Gas Act for authorization for a one-time accounting balance of non-redelivered exchange volumes between Williston Basin and K N Energy, Inc. (K N), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin states that gas exchange agreements (Fremont County Exchange) dated October 20, 1965, and February 5, 1971, with K N have been operated as non-jurisdictional field exchanges. Williston Basin states that due to the loss of all of Williston Basin's gas sources connected to K N's gathering system and the continued delivery of K N's gas into Williston Basin's gathering system, the exchange agreements have become a transportation service on Williston Basin's part with redelivery of K N's gas at the interconnection of the two parties natural gas transmission pipelines near the Riverton Dome Plant in Fremont County, Wyoming. Williston Basin further states that authority for this transportation service was granted in Docket No. CP85-534-000.

Williston Basin states that a second gas exchange agreement with K N (Madden Field Exchange) dated March 31, 1978, is operated as a non-jurisdictional field exchange in the Madden Field located in Fremont and Natrona Counties, Wyoming.

Williston Basin further states that because of past facility limitations, an out-of-balance has occurred in the exchange agreements, but in opposite directions. It is explained that to facilitate the expeditious and equitable solution to the existing imbalances of the Fremont County Agreement and the

Madden Agreement, Williston Basin requests authority for a one-time accounting balance of equivalent volumes with K N under these exchanges. Subsequent to this balancing, Williston Basin states that it would be able to maintain these exchanges in balance independently.

It is stated that no additional facilities are proposed by this application.

Comment date: April 24, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-7948 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF84-91-004, et al.]

Carolina Cogeneration Company, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

April 3, 1987.

Take notice that the following filings have been made with the Commission.

1. Carolina Cogeneration Company, Inc.

[Docket No. QF84-91-004]

On March 24, 1987, Carolina Cogeneration Company, Inc. (Applicant), c/o SJE Investments, 1960 Lincoln Park West, Suite 2702, Chicago, Illinois 60614, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Craven County, North Carolina. The facility will consist of a combustion turbine generating unit and a heat recovery steam generator. Steam produced from the facility will be used in an integrated chemical process facility to produce merchant carbon dioxide (CO_2). The electric power production capacity of the facility will be 84 MW. The primary energy source will be synthetic fuel gas. Installation of the facility is scheduled to begin in July 1987.

2. Mobil Oil Corporation

[Docket No. QF87-335-000]

On March 23, 1987, Mobil Oil Corporation (Applicant), of Billingsport Road, Paulsboro, New Jersey, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located adjacent to Applicant's oil refinery in Paulsboro, New Jersey. The facility will consist of three combustion turbine generators, three waste heat recovery steam generators (HRSG), one automatic extraction non-condensing steam turbine generator, and one non-condensing steam turbine generator. Extraction and exhaust steam from the steam turbines will be used within Applicant's oil refinery. The net electric power production capacity of the facility will be 146 MW. The primary energy source will be natural gas and refinery gas. The facility is scheduled to commence operation in the third quarter of 1989.

3. Tastykake, Inc.

[Docket No. QF87-338-000]

On March 26, 1987, Tastykake, Inc. (Applicant), of 2801 Hunting Park Avenue, Philadelphia, Pennsylvania 19129, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Applicant's bakery on Hunting Park Avenue in Philadelphia, Pennsylvania. The facility will consist of a combustion turbine generator and a waste heat recovery steam generator (HRSG). Steam from the HRSG will be utilized by Applicant for bakery processes and heating requirements. The primary energy source will be natural gas, with oil used when natural gas is not available. The maximum net electric power production capacity of the facility will be 3.6 MW. Construction of the facility is expected to begin in August 1987.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-7949 Filed 4-8-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3183-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382–2712 (FTS 382–2712) or Jackie Rivers, (202) 382–2740 (FTS 382–2740).

SUPPLEMENTARY INFORMATION:

Office of Air And Radiation

Title: Lead Additive Report for Refineries and Importers, and for Manufacturing Facilities or Sites (EPA ICR #0232). (This is a revision of an existing collection.)

Abstract: The lead phasedown program was designed to reduce adverse health effects associated with automotive lead emissions. This renewal of the basic program includes the reduction of burden hours related to the phased end of the lead banking and trading provisions. Gasoline importers, refineries, and lead additive manufacturers must submit quarterly reports pertaining to the inventory and transfer of lead additives used in gasoline. EPA uses the information to identify and prosecute violaters and to monitor the effectiveness of the program in achieving its objectives.

Respondents: Gasoline importers, refineries, and lead additive manufacturers.

Estimated Annual Burden: 17,594 hours.

Title: NSPS for Kraft Pulp Mills (EPA ICR #1055). (This is a revision of a currently approved collection.)

Abstract: Kraft pulp mills must notify EPA of construction; of each modification, startup, shutdown, and malfunction; and of the results of each performance test. They install, calibrate, and maintain continuous monitoring systems to record opacity, total reduced sulfur (TRS) emissions, temperature, and (for scrubbers) pressure. Also, respondents record and maintain (a) data from all tests and the continuous monitoring system, and (b) data on any startup, shutdown, and malfunction in the operation of the affected facility, its controls, and the monitoring systems. They must also calculate TRS emissions daily and report excess emissions semiannually. The States and/or EPA use the data to ensure compliance with the standards, to target inspections, and, when necessary, as evidence in court.

Respondents: Owners or operators of kraft pulp mills.

Estimated Annual Burden: 13,754 hours.

Agency PRA Clearance Requests Completed by OMB

None received since the last notice was published.

Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM–223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Nicholas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, (Room 3228), 726 Jackson Place, NW., Washington, DC 20503.

Dated: April 3, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87–7834 Filed 4–8–87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[File Nos. BP–860109AC and BP–860331AD; MM Docket No. 87–60]

Applications for Consolidated Hearing; Richford Communications Co. and James Richford

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant City, and State	File No.	MM Docket No.
A. Richford Communications Company, Bangor, ME.	BP9–860109AC	87–60
B. James E. Richford, Orono, ME.	BP–860331AD	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings, are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the cooresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading; Applicant(s)

1. Contingent-Comparative,.....All Applicants.
2. 307(b),.....All Applicants.
3. Ultimate,.....All Applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–7905 Filed 4–8–87; 8:45 am]

BILLING CODE 6712-01-M

Information Collection Requirements Approval by Office of Management and Budget

March 31, 1987.

The following information collection requirements have been approved by the Office of Managment and Budget under the Paperword Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0099

Title: Annual Report Form M (Telephone Companies)

Form No.: FCC Form M

The approval on Form M has been extended through 3/31/90. The current edition with an expiration date of 3/31/87 will remain in use until updated forms are available.

OMB No.: 3060–0105

title: Common Carrier and Satellite Radio Licensee Qualification Report

Form No.: FCC 430

The approval on form FCC 430 has been extended through 3/31/90. The November 1984 edition with an expiration date 3/31/87 will remain in use until updated forms are available.

OMB No.: 3060–0113

Title: Equal Employment Opportunity Program—10 Point Model Program and Guidelines

Form No.: FCC 396

The Approval on form FCC 396 has been extended through 7/31/87. The May 1986 edition with a previous expiration date of 1/31/87 will remain in use until 7/31/87.

OMB No.: 3060–0120

Title: Equal Employment Opportunity Program—5 Point Model Program and Guidelines

Form No.: FCC 396-A

The approval on form FCC 396-A has been exteneded through 7/31/87. The January 1984 edition with a previous expiration date of 1/31/87 will remain in use until 7/31/87.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–7900 Filed 4–8–87; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 1, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: None

Title: Section 15.312(c), Authorization required (on-site verification of field disturbance sensors)

Action: New collection

Respondents: Manufacturers of perimeter protection systems operating in the bands 54–72 or 76–88 MHz

Frequency of Response: Recordkeeping requirement on occasion

Estimated Annual Burden: 200 Recordkeepers; 3,600 Hours

Needs and Uses: Field disturbance sensors operating in the low VHF region of the spectrum have the potential to cause interference to television broadcasting and other radiocommunication signals. To prevent interference the Commission is requiring manufacturers of perimeter protection systems to test each system upon installation to ensure that technical standards continue to be met at the installation site. The manufacturers must maintain lists of all installations and records of measurments taken for each installation. This information must be made available to the Commission upon request.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–7901 Filed 4–8–87; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 30, 1987.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW. Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington DC 20503, (202) 395–4814.

OMB No.: 3060–0245.

Title: Section 74.537, Temporary Authorizations.

Action: Extension.

Respondents: Licenses of aural broadcast studio transmitter link (STL) of intercity relay station.

Frequency of Response: On occasion.

Estimated Annual Burden: 50 Responses; 200 Hours.

Needs and Uses: Section 74.537 requires licensees of aural broadcast studio transmitter link (STL) or intercity relay station to file an informal request for special temporary authorization for operations of a temporary nature. Data is used by FCC staff to insure that temporary operation will not cause interference to existing stations.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–7902 filed 4–8–87; 8:45 am]

BILLING CODE 6712-01-M

[FCC 87-35]

Privatization of Special Call Sign System For Amateur Stations; Pleading Cycle Established in PRB-3; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice regarding privatization of special call sign system; correction.

SUMMARY: On February 12, 1987, the Commission published a Notice regarding privatization of special call sign system for Amateur Stations (52 FR 4530). Inadvertently, page two of that document was omitted. For the convenience of the reader, the entire text of that Notice is set forth below.

FOR FURTHER INFORMATION CONTACT: Maurice DePont, (202) 632–4964.

William J. Tricarico,

Secretary.

February 3, 1987.

By letter of June 17, 1986, the American Radio Relay League, Inc. expressed an interest in finding a way by which requests for specific call signs for amateur stations can be honored through a system administered in the private sector. Callbook Magazine, Gordon Girton and Central Alabama VEC have also expressed an interest in such a system. The FCC favors the implementation of such a system if it can be accomplished with no additional cost or workload to the FCC. The purpose of this Public Notice is to solicit comments and proposals on this matter from interested persons so that a determination can be made as to whether to proceed with its implementation.

There is a large demand in the Amateur service for call signs of choice. Because of limited resources, the FCC cannot honor requests for specific call signs. The FCC assignment system is totally automated: call signs are assigned on the station license from alphabetized lists arranged according to mailing address and operator license class.

It appears that a practical approach would be for the actual station licensing function—including the assignment of a call sign—to be performed by the FCC before the private sector becomes involved. Then, upon the licensee's request, a Special Call Sign Coordinator (SCSC) in the private sector would assign one or more supplemental special call signs. The selection system for determining which licensees would be eligible for which call signs would be the prerogative of the SCSC. A special call sign could be used in lieu of the FCC-assigned call sign during the station identification procedure required by §97.84. The assignment of a special call sign would be a service for the licensee, not a condition of FCC licensing nor a service replacing the FCC. The SCSC would maintain a data base of assigned special call signs for use in monitoring and compliance work. Special call sign assignments would not be incorporated into the FCC's license data base.

The FCC would discontinue processing requests for call sign changes. (The FCC now systematically assigns a different call sign upon request when the licensee changes mailing address to a different region or upgrades to a higher operator class).[1] All call signs currently assigned to amateur stations would be frozen. All new stations, regardless of the licensee's operator class, would be assigned a 2 X 3 format call sign from the prefix block NA-NZ. All other call signs would be made available to the SCSC for assignment as special call signs. Furthermore, as call signs which are currently in use are dropped from the FCC data base due to failure to renew the license, they would be available to the SCSC for assignment as special call signs.

It appears that it would be more manageable if a single organization serves as the SCSC. However, we invite comments with respect to whether there should be only one or multiple SCSC's. Our preliminary view is that having one SCSC would promote a more efficient system by substantially simplifying the special call sign assignment process. If multiple SCSC's assigned special call signs, each would have to be aware of the other's assignments in progress at all times. Otherwise, the same special call sign could be assigned to different stations. The logistics of handling this situation appear to be difficult.

A single SCSC would minimize the number of points of contact between the SCSC and the FCC. As the number of SCSC's increased so would the administrative burden upon the FCC. This benefit is especially important considering the likelihood of limited agency resources in coming years.

Moreover, if there were multiple SCSC's it would be likely that each would use a different selection system unless performance standards were established. There could be considerable inconsistency in the assignments. For instance, a call sign available only to an Amateur Extra operator under one SCSC's system might be available to a lower class operator under another SCSC's selection system.

The special call sign assignment system that we envision would be operated on a not-for-profit basis but the SCSC could recover reasonable out-of-pocket administrative costs.

SCSC Selection Criteria:

1. Ability to assign call signs to amateur stations in an efficient and objective manner;
2. Ability to provide an accurate on-line access data base of assigned special call signs for monitoring and compliance work;
3. Ability to minimize the FCC resources required in the establishment of the special call sign system; and
4. Ability to minimize the cost to the licensee for administering the system.

Parties wishing to file formal comments on the issues raised herein, to raise additional or conflicting issues or to submit a proposal to be an SCSC should do so by filing an original and four copies with the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554, on or before April 23, 1987. Reply comments may be filed on or before May 22, 1987. Proposals must respond to the above selection criteria and must state the estimated annual burden of administering the system and maintaining the data base. All filings should refer to PRB-3.

Copies of letters from ARRL, Central Alabama VEC, Callbook Magazine and any subsequently filed documents in this matter may be obtained from the FCC's contractor for public records duplication, International Transcription Services, Inc., 1270 Fairfield Road (Route 116 West), Gettysburg, PA 17325, (717) 337-1433 or Suite 140, 2100 M Street, NW., Washington, DC 20037, (202) 875-3800. Any documents related to this matter will also be available for inspection and copying in the Private Radio Bureau Public Reference Room, 1270 Fairfield Road (Route 116 West), Gettysburg, PA 17325

For further information contact the Personal Radio Branch at (202) 632-4964.

[FR Doc. 87-7903 Filed 4-8-87; 8:45 am]

BILLING CODE 6712-01-M

[1] See Public Notice *Amateur Radio Station Call Sign Assignment System* dated November 8, 1985.

Private Radio Bureau Opens Period for Filing of 2.5 GHz (H-Group Channels) Applications for Modifications of Authorizations

On May 11, 1987, the Private Radio Bureau will begin accepting applications for modifications to stations operating on the 2.5 GHz point-to-multipoint Private Operational-Fixed Microwave Service (OFS) H-group channels. A Public Notice will be released in the near future explaining when applications for new stations will be accepted.

The filing of applications for the H-group channels was suspended as of December 31, 1983, due to the large number of applications received during the original filing period (*See Public Notice*, Mimeo 1207, released December 6, 1983). Those applications have now been disposed of, thus permitting the acceptance of other applications.

Licensees of existing OFS stations operating or authorized on the H-group channels will have a one week filing window to submit applications for both substantial and minor modifications to their authorizations (*See* 47 CFR 1.962 for the distinction between substantial and minor modifications). This one week filing window will open May 11, 1987 and continue through the close of business on May 15, 1987.

Applications for assignment of authorization and transfer of control will not be subject to this filing window. These types of requests will be accepted immediately upon release of this Public Notice.

Applicants are reminded that requests for certain modifications to existing authorizations must be accompanied by a frequency engineering analysis. *See* 47 CFR 94.15 and 94.63(e). Further, modification applications which request a change in station location must include a showing that the proposed transmitter site will not be located less than 50 miles from any previously authorized co-channel station or less than 50 miles from any other station previously authorized to the same applicant. Applications proposing stations within 50 miles of a previously authorized co-channel station will be accepted for filing only if they include both (1) a detailed analysis demonstrating that an exception to the 50 mile separation criterion for H-channels is warranted and (2) a

statement to the effect that all parties affected have agreed to accept the higher level of interference.

If the Commission receives applications which create mutually exclusive situations and there are no material differences in the applications which would require a comparative hearing, the modification applications will be chosen for grant by the randon selection process as set forth in Section 1.972 of the Commission's Rules. Applicants are encouraged to consider any settlement proposals which may be proffered. The Commission will only consider settlement agreements which eliminate mutual exclusivity for an entire area. All settlement agreements are subject to final approval by the Commission.

Beginning April 1, 1987, the Commission will require a $135 fee to accompany most applications. Public safety, governmental, and all transfer of control applications are exempt from fees and should continue to be filed at the Private Radio Bureau's Licensing Division in Gettysburg, Pennsylvania, 17326. Applications which require a fee must be filed at the designated receipt location: Federal Communications Commission, Microwave Service, P.O. Box 360850M, Pittsburgh, PA 15251–6850. Applications which require a fee may also be filed in person or by courier between the hours of 9 a.m. and 3 p.m., Monday through Friday, at the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA, 15259; Attn: Wholesale Lockbox Shift Supervisor. The effective filing date of an application requiring a fee is the date upon which it is received at the Commission's authorized receipt location in Pittsburgh and not the date it is received in Gettysburg. For more information regarding the Commission's fee program, consult the *Report and Order* in General Docket No. 86–285, released February 17, 1987.

Applications not filed in accordance with the above or other requirements of the Commission will be dismissed as defective. For further information, contact Michael B. Hayden at (717) 337–1421.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–7904 Filed 4–8–87; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

Tahoe Savings & Loan Association, South Lake Tahoe, CA; Appointment of Receiver

Notice is hereby given that the Superior Court for the County of Los Angeles has confirmed the appointment by the Savings and Loan Commissioner for the State of California ("Commissioner") of a receiver for Tahoe Savings and Loan Association, South Lake Tahoe, California ("Tahoe"), and 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), the Federal Savings and Loan Insurance Corporation accepted the tender of the Commissioner of the appointment as receiver for Tahoe, for the purpose of liquidation, effective April 3, 1987.

Dated: April 3, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–7858 Filed 4–8–87; 8:45 am]

BILLING CODE 6720–01–M

Tahoe Savings & Loan Association, South Lake Tahoe, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. § 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Tahoe Savings and Loan Association, South Lake Tahoe, California on April 3, 1987.

Dated: April 3, 1987.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87–7859 Filed 4–8–87; 8:45 am]

BILLING CODE 6720–01–M

Vernon Savings & Loan Association; Vernon, TX; Appointment of Receiver

Notice is hereby given that the Savings and Loan Commissioner for the State of Texas ("Commissioner") appointed the Federal Savings and Loan Insurance Corporation ("FSLIC") as receiver for Vernon Savings and Loan Association ("Vernon"), and 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), the FSLIC accepted the tender of the Commissioner of the appointment as receiver for Vernon, for the purpose of liquidation, effective March 20, 1987.

Dated: April 3, 1987.

Jeff Sconyers,

Secretary.

[FR Doc. 87–7860 Filed 4–8–87; 8:45 am]

BILLING CODE 6720–01–M

Federl Savings and Loan Advisory Council Meeting

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: This notice amends the previous notice published in the **Federal Register** on April 6, 1987 (52 FR 10929) to add additional topics to the Federal Savings and Loan Advisory Council meeting scheduled for April 22, and 23.

DATES: April 22, 1987, 9:00 a.m.—4:00 p.m.; April 23, 1987, 9:00 a.m.—11:30 a.m.

ADDRESS: Federal Home Loan Bank Board, Board Room, 6th Floor, 1700 G Street, NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT:

John M. Buckley, Jr. (202/377–6577).
Debra J. Ahearn (202/377–6924).

SUPPLEMENTARY INFORMATION:

Additional proposed topics:

Classification of Assets.
Appraisals Standards

Jeff Sconyers,

Secretary to the Federal Home Loan Bank Board.

April 6, 1987.

[FR Doc. 87–7925 Filed 4–8–87; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 573.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–011045–001.

Title: Trans-Atlantic Revenue Apportionment Agreement.

Parties:

Atlantic Container Line, B.V.
Dart-ML Limited
Hapag-Lloyd AG
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM)
Trans Freight Lines
Gulf Container Line (GCL), B.V.
Nedlloyd Lijnen, B.V.

Synopsis: The proposed amendment would change the definition of "cargo units" from revenue tons to container units, with appropriate conversion formulae for any non-containerized cargo carried under the agreement.

Agreement No.: 203–011075–001.

Title: Central America Discussion Agreement.

Parties:

United States/Central America Liner Association
Ecuadorian Line, Inc.

Synopsis: The proposed amendment would admit Nordana Line, Inc.; Flagship Container Line, Inc.; Concorde Shipping, Inc. and Nexos Line to membership in the agreement. The parties have requested a shortened review period and a temporary waiver of the Commission's format requirements.

Agreement No.: 224–011088.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles (Port)
Matson Terminals, Inc. (Matson)

Synopsis: The proposed agreement would permit the Port to lease 93.2 acres of land and 2,203 linear feet of wharf at Berths 206–209 in the Port of Los Angeles to Matson until January 31, 1991.

By Order of the Federal Maritime Commission.

Dated: April 6, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–7907 Filed 4–8–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Carolina Mountain Holding Co. 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 29, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Carolina Mountain Holding Company*, Highlands, North Carolina; to engage *de novo* through its subsidiary, CM Mortgage, Inc., Highlands, North Carolina, in originating, selling, and servicing mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *West Tennessee Bancshares, Inc.*, Bartlett, Tennessee; to engage *de novo* through its subsidiary, Bartlett Securities Corporation, Bartlett, Tennessee, in discount securities brokerage services and will not underwrite or participate in the underwriting or any security pursuant to section 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in Tennessee and adjacent states. Comments on this application must be received by April 27, 1987.

Board of Governors of the Federal Reserve System, April 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–1820 Filed 4–6–87; 8:45 am]

BILLING CODE 6210–01–M

First of America Bank Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate 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 April 27, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First of America Bank Corporation*, Kalamazoo, Michigan, and First of America Bancorporation—Illinois, Inc., Libertyville, Illinois; to acquire 100 percent of the voting shares of BancServe Group, Inc., Rockford, Illinois, and thereby indirectly acquire City National Bank & Trust Company of Rockford, Rockford, Illinois, and Boone State Bank, Belvidere, Illinois.

In connection with this application, Applicants also propose to acquire BancServe Credit Life Insurance Company, Rockford, Illinois, and thereby engage in underwriting credit, accident, and health insurance which is directly related to an extension of credit pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7822 Filed 4-8-87; 8:45 am]

BILLING CODE 6210-01-M

First Grayson Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 27, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Grayson Bancorp, Inc.*, Grayson, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Grayson, Grayson, Kentucky. Comments on this application must be received by April 29, 1987.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Mercantile Bankshares Corporation*, Baltimore, Maryland; to acquire 100 percent of the voting shares of The Eastville Bank, Eastville, Virginia.

2. *Mountaineer Bankshares of West Virginia, Inc.*, Martinsburg, West Virginia; to acquire 100 percent of the voting shares of Mercantile Bancorp, Inc., Moundsville, West Virginia, and thereby indirectly acquire Mercantile Banking and Trust Company, Moundsville, West Virginia. Comments on this application must be received by April 30, 1987.

3. *Mountaineer Bankshares of West Virginia, Inc.*, Martinsburg, West Virginia; to acquire 100 percent of the voting shares of Morgan Bancorp, Inc., Berkeley Springs, West Virginia, and thereby indirectly acquire Morgan County State Bank, Inc., Berkeley Springs, West Virginia. Comments on this application must be received by April 30, 1987.

4. *State Bancorp, Inc.*, Bruceton Mills, West Virginia; to acquire 100 percent of the voting shares of Terra Alta Bank, Terra Alta, West Virginia. Comments on this application by April 28, 1987.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Citizens BancStock, Inc.*, Morgan City, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank in St. Mary Parish, Morgan City, Louisiana. Comments on this application must be received by April 28, 1987.

2. *Southeast Banking Corporation*, Miami, Florida; to acquire 100 percent of the voting shares of The West Florida Bank, Pensacola, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Chemical Financial Corporation*, Midland, Michigan; to acquire 100 percent of the voting shares of Manufacturers Bank of Bay City, Bay City, Michigan.

2. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Bank of the North Shore, Northbrook, Illinois, and thereby indirectly acquire North Shore Bancorp, Inc., Northbrook, Illinois.

Board of Governors of the Federal Reserve System, April 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7823 Filed 4-8-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Larry Collins, et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 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 April 24, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Larry Collins*, Portland, Tennessee; to acquire up to 51 percent of the voting shares of Volunteer State Bancshares, Inc., Portland, Tennessee, and thereby indirectly acquire Volunteer State Bank, Portland, Tennessee.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Gary L. Dickinson*, Chillicothe, Missouri; to acquire 68.84 percent of the

voting shares of First Bancshares of Kirksville, Inc., Kirksville, Missouri, and thereby indirectly acquire First National Bank of Kirksville, Kirksville, Missouri.

2. *First Citizens National Bank Employee Stock Ownership Plan and Trust*, Dyersburg, Tennessee; to acquire 4.31 percent of the voting shares of First Citizens Bancshares, Inc., Dyersburg, Tennessee, and thereby indirectly acquire First Citizens National Bank, Dyersburg, Tennessee.

Board of Governors of the Federal Reserve System, April 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7821 Filed 4-8-87; 8:45 am]

BILLING CODE 6210-01-M

NBD Bancorp, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) 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 April 28, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to acquire NBD Securities, Inc., Detroit, Michigan, and thereby expand its nonbanking activities to include the sale of precious metals, including gold and silver bullion and coins, upon the order of and as agent for the account of its customers. NBD Securities will also act as agent for account of customers, for the purchase and sale, of shares of both loads and no load mutual funds and unit investment trusts pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 3, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-7824 Filed 4-8-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Service's claims collection regulation (45 CFR Part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the HHS Assistant Secretary for Management and Budget in the **Federal Register.**

The Secretary of the Treasury has certified a rate of 14.25% for the quarter ended December 31, 1986. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 2, 1987.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 87-7933 Filed 4-8-87; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 87N-0068]

Care for Life of Lubbock, Inc.; Revocation of U.S. License No. 890

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 890) and the product license issued to the Care for Life of Lubbock, Inc., for the manufacture of Source Plasma. In a letter dated August 4, 1986, the firm requested that its establishment and product licenses be revoked and waived an opportunity for a hearing.

DATES: The revocation of the establishment license and product license was effective on October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 890) and product license issued to the Care for Life of Lubbock, Inc., for the manufacture of Source Plasma. The Care for Life of Lubbock, Inc., was located at 2415 A Main St., Lubbock, TX 79401.

On April 21 through 25 and 30, 1986, FDA inspected Care for Life of Lubbock, Inc. This inspection revealed serious deviations from the applicable biologics regulations. These deviations included, but were not limited to: (1) The former assistant manager routinely directed that donor suitability determinations, including predonation tests and medical history questions, be eliminated or abbreviated (21 CFR 640.63(c)); (2) unapproved individuals performed medical examinations (21 CFR 601.12 and 640.63(b)); and (3) medical examination forms contained the signatures of persons who did not perform the examinations (21 CFR 601.12(a) and 640.63).

Because the deviations represented a significant danger to health, FDA suspended the establishment license (U.S. License No. 890) on May 30, 1986.

Subsequent to the suspension, on June 12 and 13, 1986, the agency reviewed new donor records, dated January 27 through 30, 1986. All physical examination forms on these dates bore the signature of the approved physician, signifying that he had performed the medical examinations and reviews for

each donor. However, close examination of 25 records revealed entries that differed from those customarily used by the approved physician. The approved physician acknowledged that some of the entries did not appear to be his entries, and that most likely he did not perform these examinations. The approved physician, the responsible head, and the center manager stated that they did not know who performed these medical examinations.

FDA's investigation revealed that the firm's responsible head failed to exercise control of the establishment in all matters relating to compliance with the regulations. The responsible head stated that he may have made entries in medical records after the fact for critical elements of physical examinations. As required by 21 CFR 606.160(a), records must be maintained concurrently with the performance of work, identify the person performing that work, and provide a complete history of the work performed. In FDA's judgment, the firm's practices raised serious questions as to the ability of the responsible head and other managers to fulfill their duties competently.

By letter dated June 6, 1986, the firm requested that revocation of license be placed in abeyance. Based on the willful nature of the violations discovered during the FDA inspections and investigation, FDA denied the firm's request.

As provided in 21 CFR 601.5(b), FDA issued a letter on July 25, 1986, notifying the licensee of FDA's intention to revoke U.S. License No. 890, setting forth grounds for the revocation, and offering an opportunity for a hearing on the proposed revocation. In a letter dated August 4, 1986, Care for Life of Lubbock, Inc., requested that its establishment and product licenses be revoked and waived an opportunity for a hearing. The agency granted the licensee's request by letter to the firm dated October 15, 1986, issued under 21 CFR 601.5(a), which revoked the establishment license (U.S. License No. 890), and the product license of Care for Life of Lubbock, Inc. FDA has placed copies of the letters dated May 30, June 6, July 25, August 4, and October 15, 1986, on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Accordingly, under 21 CFR 12.38 and the Public Health Service Act (section 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Office of Biologics Research and Review (21 CFR 5.68), the establishment license (U.S. License No. 890) and product license issued to Care for Life of Lubbock, Inc., for the manufacture of Source Plasma were revoked effective October 15, 1986.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: April 2, 1987.

Gerald F. Meyer,

Acting Deputy Director, Center for Drugs and Biologics.

[FR Doc. 87–7828 Filed 4–8–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84F–0246]

Nuodex, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition (FAP 4B3799) proposing that the food additive regulations be amended to provide for the safe use of 5-hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo(3.3.0)octane, 5-hydroxymethyl-1-aza-3,7-dioxabicyclo(3.3.0)octane, and 5-hydroxypoly(methyleneoxy)methyl-1-aza-3,7-dioxabicyclo(3.3.0)-octane as a microbicide in aqueous mixtures used in the manufacture of paper and paperboard that contact food. The petition was withdrawn by Nuodex, Inc.

FOR FURTHER INFORMATION CONTACT: Julius Smith, 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 September 6, 1984 (49 FR 35244), FDA published a notice that it had filed a petition (FAP 4B3799) from Nuodex, Inc., Turner Place, P.O. Box 365, Piscataway, NJ 08854, that proposed to amend the food additive regulations to provide for the safe use of 5-hydroxymethoxymethyl-1-aza-3,7-dioxabicyclo(3.3.0)octane, 5-hydroxymethyl-1-aza-3,7-dioxabicyclo(3.3.0)octane, and 5-hydroxypoly(methyleneoxy)methyl-1-aza-3,7-dioxabicyclo(3.3.0)octane as a microbicide in aqueous mixtures used in the manufacture of paper and paperboard articles that contact food. Nuodex, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 31, 1987.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–7827 Filed 4–8–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87D–0054]

Insecticide; Retention of Action Level for Mirex in Fish

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is retaining the action level for residues of the insecticide mirex in fish. The Environmental Protection Agency (EPA) recently announced the revocation of all its existing tolerances for residues of mirex in or on raw agricultural commodities (51 FR 45114). In the notice announcing the revocation, EPA recommended that FDA retain its current action level for mirex in fish and that no additional action levels be established for foods regulated by FDA. Based on EPA's recommendation, FDA is reaffirming the current action level for residues of mirex in fish as established in Compliance Policy Guide 7141.01, Attachment B.11.

DATE: Written comments by June 8, 1987.

ADDRESSES: Written comments and requests for single copies of Compliance Policy Guide 7141.01, Attachment B.11, should be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0175.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 17, 1986 (51 FR 45114), EPA published a notice revoking all of the pesticide tolerances for residues of the chemical dodecachlorooctahydro-1,3,4-metheno-2*H*-cyclobuta[*cd*]-pentalene (mirex) on all raw agricultural commodities. This action by EPA was taken to remove pesticide tolerances for which registered uses have been cancelled. In the notice revoking the tolerances, and in a December 3, 1986, letter to FDA, EPA recommended that the current action level of 0.1 part per million established by FDA for residues of mirex in fish be retained. It was also recommended that no action levels be established for FDA

regulated products to replace the revoked tolerances.

FDA has reevaluated its current action level for residues of mirex in fish and accepts EPA's recommendation to retain the 0.1 part per million action level as it appears in Compliance Policy Guide 7141.01, Attachment B.11. There had not previously been an established tolerance for mirex in fish. Therefore, the retention of the action level does not constitute the creation of a new or replacement action level for a revoked tolerance or a change in any enforcement policy. This action level will remain in effect until further notice. FDA will reassess this action level as new data become available.

Copies of EPA's recommendation, a memorandum to all FDA Regional and District Offices announcing this decision, and the current FDA Compliance Policy Guide 7141.01, Attachment B.11, are on file in the Dockets Management Branch. Requests for single copies of the FDA Compliance Policy Guide should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch (address above).

Interested persons may submit written comments, data, and information regarding this action level to the Dockets Management Branch (address above). Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 1, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-7826 Filed 4-8-87; 8:45 am]

BILLING CODE 4160-01-M

Food And Drug Administration

[Docket No. 87N-0096]

Drug Export; Lymp-Scan (Kit for the Preparation of Technetium TC-99m, Antimony Trisulfide Colloid)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cadema Medical Products, Inc., has filed an application requesting approval for the export of the product Lymph-Scan (Kit for the preparation of Technetium TC-99m Antimony Trisulfide Colloid) to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its reveiw of the application. To meet this requirement, the agency is providing notice that Cadema Medical Products, Inc., Middletown, NY, has filed an application requesting approval for the export of the product Lymph-Scan (Kit for the preparation of Technetium TC-99m Antimony Trisulfide Colloid) to Canada. The application was received and filed in the Center for Drugs and Biologics on March 16, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 20, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: April 2, 1987

Daniel L Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-7829 Filed 4-8-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[HSQ-143-PN]

Medicare Program; End Stage Renal Disease Program: Revised Network Area Designations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice would provide for 17 End Stage Renal Disease (ESRD) network areas, set forth the geographic areas of the new network organizations and the criteria used to designate the new areas. This notice also proposes evaluation criteria and performance indicators for monitoring the performance of network organizations.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on June 8, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-143-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-143-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW.,

Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Spencer Colburn, (301) 594–3413.

SUPPLEMENTARY INFORMATION:

I. Background

Previous Legislative Activity and Regulations

The Social Security Amendments of 1972 (Pub. L. 92–603) extended Medicare coverage to individuals with end-stage renal disease (ESRD) who require dialysis or transplantation. The End-Stage Renal Disease Amendments of 1978 (Pub. L. 95–292) authorized the establishment of ESRD network areas and network organizations under the Medicare program, consistent with the criteria the Secretary finds appropriate to assure the effective and efficient administration of ESRD program benefits.

In June 1984, Congress (House Report 98–861, p. 1336) directed the Secretary to consider consolidating the existing 32 network areas.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272) was enacted. Section 9214 of that law requires the Secretary to maintain renal disease network organizations as authorized under section 1881(c) of the Act and not merge the network organizations into other organizations or entities. The Secretary was permitted to consolidate network organizations, but only if such consolidation did not result in fewer than 14 such organizations being permitted to exist.

Consistent with section 9214 of Pub. L. 99–272, we published a notice of proposed rulemaking on April 15, 1986 (51 FR 12714), and a final rule on August 26, 1986 (51 FR 30356). These regulations permit the Secretary to redesignate the ESRD networks and improve their administration. At the same time we published the final rule, we also published a final notice (51 FR 30434) that provided for 14 networks and set forth geographic areas of the new network organizations (are designations) under the ESRD program.

For more detailed explanations of each of the above **Federal Register** documents, refer to the preambles to those documents.

Omnibus Budget Reconciliation Act of 1986

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Pub. L. 99–509) was enacted. Sections 9335(d) through (h) of Pub. L. 99–509 amend, in several ways, section 1881(c) of the Act. The specific provisions that this notice would implement require the Secretary to—

- Establish at least 17 ESRD network areas not later than May 1, 1987 (section 9335(d)(1) and (2)).
- Designate, not later than July 1, 1987, a network administrative organization for each area that will establish a network council of renal dialysis and transplant facilities located in the area and a medical review board (section 9335(d)(1) and (2)).
- Consult with professional and patient organizations regarding the redesignation of network areas and publish in the **Federal Register** a description of each network area and the criteria on the basis of which network determinations were made (section 9335(d)(1)).
- Publish in the **Federal Register** the criteria, standards and procedures to evaluate an applicant organization's ability to perform or actual performance of required network functions (section 9335(d)(1)).
- Evaluate each applicant network organization based on quality and scope of services and not accord more than 20 percent of the weight of the evaluation to the element of price (section 9335(d)(1)).
- Terminate an agreement with a network administrative organization (network organization) only if he finds, after applying published standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If an agreement is to be terminated, the Secretary must select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition (section 9335(d)(1)).

Additionally, if the Secretary designates a network organization for an area that was not previously designated for that area, the statute requires the Secretary to offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area (section 9335(d)(3)).

Section 9335 of Pub. L. 99–509 contains other provisions that amend section 1881(c) of the Act relating to the ESRD networks. We will implement these provisions through the publication of separate proposed and final regulations in the **Federal Register**. Specifically, the statute requires ESRD network organizations to—

- Establish a network council of renal dialysis and transplant facilities located in each area and a medical review board (section 9335(d)(1)) with at least one patient representative as a member of each network council and each medical review board (section 9335(e)).
- Encourage participation in vocational rehabilitaton programs and develop criteria and standards relating to such encouragement (section 9335(f)(1), (2), and (4), and (h)).
- Report on those facilities and providers not providing appropriate medical care (section 9335(f)(3)).
- Implement a procedure for evaluating and resolving patient grievances (section 9335(f)(5)).
- Conduct onsite reviews of individual ESRD facilities as directed by the Secretary or medical review board and utilize standards of care established by the network organization to assure proper medical care (section 9335(f)(5)).
- Collect, validate, and analyze ESRD program data (section 9335(f)(5)).
- Provide data to the national ESRD data registry established under section 1881(c)(7) of the Act (section 9335(f)(5)).

In addition, the statute requires that the medical review board include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and at least one patient representative (sections 9335(d)(1) and (e)). It also encourages facility cooperation with network organizations by requiring that ESRD facilities and providers follow the recommendations of the medical review board (section 9335(g)).

Meeting with Interested National Organizations

In accordance with the provisions of section 9335(d) of Pub. L. 99–509, we invited every national renal professional and patient organization to provide counsel with respect to the network area designations and to submit proposed network area configurations. We scheduled a meeting with interested groups on December 3, 1986. Eight of the national organizations attended the meeting and discussed network area designation criteria and specific area configuration proposals. Two written proposals were submitted. The following organizations participated in the meeting:

American Nephrology Nurses Association
The Forum of End Stage Renal Disease Networks (Forum)
National Association of Patients on Hemodialysis and Transplantation (NAPHT)
National Dialysis Association
National Kidney Foundation
National Renal Administrators Association

Renal Physicians Association (RPA)
United Network of Organ Sharing

The attendees presented their views on the criteria set forth in the August 26, 1986 notice, alternative criteria, and the relative importance of each of these. During the discussion, a consensus emerged regarding the criteria to be used as a basis for area designation, which is reflected by the following.

A. *Patient Population*—The attendees agreed that patient population is the most crucial factor, for a number of reasons, in the designation of network areas. Since Congress has provided a network funding mechanism based on the number of treatments provided within the network area, this criterion would determine the funding level of each network organization. Therefore, the application of this criterion could determine if there is a sufficient level of funding to ensure the survival of small network organizations and a basic level of services provided to the beneficiaries, the providers and HCFA. Appropriate application of this factor would prevent the growth of disparities among the services provided to ESRD beneficiaries throughout the country.

B. *Correspondence to State Boundaries*—This factor is important for several reasons. The network organizations are responsible for the collection and validation of program data. HCFA program needs require these data on a Statewide basis. To the extent possible, conforming network boundaries to State boundaries would allow each network organization the opportunity to address individual State problems and conduct Statewide studies. In addition, this criterion would enable the State health departments ready access to Statewide information.

A number of States administer kidney programs that provide funding and services for dialysis beneficiaries. These programs frequently use network services for data collection and analysis. Combining part of a State with another State for network purposes may result in administrative difficulties for the State programs. Integrity of State programs is also important for the application of survey and certification requirements and the development of vocational rehabilitation programs. For the benefit of the Medicare beneficiaries, the group believes that splitting States and placing parts of the State into two or more network areas would create undesirable and uneven provision of the required services.

C. *Maintenance of Current Patient Referral Patterns Represented by the Current Network Structure*—To the extend possible, the group agreed that the current network configurations should be maintained. Maintenance or consolidation of several of the current network areas minimizes the disruption of the network program and builds upon the relationships among the providers that have developed over the past years of the renal program.

D. *Administrative Considerations*—In addition, the group recognized that HCFA may have special needs to effectively administer and conduct oversight of the new network organizations. Such considerations may include designations within HCFA regional office boundaries and limiting the number of organizations. This criterion received the lowest priority for designating the areas.

Submitted Proposals

Following the meeting, members of the Forum, NAPHT, and RPA met and developed and submitted the following recommendations for the designation of network areas. The old network areas refer to the designations prior to the August 26, 1986 final notice (51 FR 30434).

New network area	Old network area [1]
1	1, 2
2	3 (Except NV)
3	4 (Except NV)
4	5, 6 (Plus NV)
5	7, 8, 13
6	9, 10, 12
7	11
8	14
9	15
10	16, 17
11	18
12	19
13	20, 21
14	22
15	23, 29, 31
16	24
17	25
18	26, 27, 28
19	30
20	32

[1] The existing network areas are reprinted as an appendix to this notice.

Additionally, the National Renal Administrators Association submitted a proposal, and we had developed several models of possible configurations. Among all of the proposals there was substantial consensus with respect to many parts of the country. However, no single configuration meets all criteria. In order to compare proposed configurations, we tried to quantify an aggregate score for meeting all criteria.

We expressed the degree of conformance of each proposed configuration as a percentage by identifying whether each proposed area in the configuration—

- Had a patient population distribution within one standard deviation from the mean for all proposed areas;
- Correspond to State boundaries; and
- Preserved existing network boundaries and recognized established medical trade areas.

We then divided the number of criteria met under each proposal by the total number of criterion elements for all proposed areas (which varied among configurations depending on the total number of areas proposed) and multiplied the result by 100.

Using this methodology, we found that the proposal from Forum, NAPHT, and RPA met 66 percent of the considered criteria (that is, patient population distribution, State boundaries, and medical trade areas and old network boundaries). However, only 40 percent of their proposed areas corresponded to State boundaries. Their proposal gave the greatest weight to existing network boundaries.

II. Provisions of the Proposed Notice

This proposed notice would implement new network area designations and set forth the criteria, standards and procedures we would use to evaluate new network organizations as required by section 9335(d) of Pub. L. 99–509. As we stated in the August 26, 1986 notice, we would also issue area designations through revisions to the ESRD Facility Manual and the Provider Reimbursement Manual. We would require facilities to notify patients of the area designation changes, and we would notify patient advocacy groups (for example, The National Association of Patients on Hemodialysis and Transplantation and The National Kidney Patients Association) directly.

Network Area Designations

We used the Forum/NAPHT/RPA proposal as a basis for developing our proposal of the network designations in this notice. However, because so few of their proposed areas correspond to State boundaries, we could incorporate few of their areas directly. We revised the areas, first, to conform to State boundaries and to reduce their proposed 20 areas to 17 areas. We did not maintain a rigid objective of ensuring that each area's patient population was within one standard deviation of the mean. (Neither had the Forum/NAPHT/RPA proposal; only 70 percent of their proposed areas met that criterion.) Rather, based on our discussions with

the industry representatives, we concluded that it was most important, regarding patient population, that each area had a sufficient number of patients to ensure adequate funding. It had been suggested that 2,500 patients was a reasonable minimum number, and all the areas recommended by Forum/NAPHT/RPA exceeded that number. Since the smallest population area they had proposed met the other criteria, especially conformance to State boundaries, we accepted that area.

We identified six States that had large patient populations such that the State might independently constitute one or more network areas: California, New York, Texas, Illinois, Florida, and Pennsylvania. (Florida, Texas, Louisiana, Indiana, North Carolina, Connecticut, and New Jersey are the single-State areas of the existing networks.) We especially considered dividing California into two areas. However, we finally decided that the operational advantages of conforming State boundaries required that each area be comprised of at least one entire State and that no area boundaries divide a State.

Accordingly, we are proposing to establish the States of California, New York, Texas, and Illinois to be distinct, single State network areas. We are not proposing the same for Florida and Pennsylvania because each has a neighboring State that we would include in the area, in Florida's case, Georgia; in Pennsylvania's case, Delaware.

Several other States have been divided among two or more networks under the existing designation, and the Forum/NAPHT/RPA proposal generally would have preserved these divisions. The States affected are Michigan, Ohio, Nebraska, Illinois, Wisconsin, Virginia, Alabama, Arkansas, Georgia, and Missouri. Some States (that is, Pennsylvania, and Virginia) would have been divided among three areas under the Forum/NAPHT/RPA proposal. Some proposed areas would have assigned very small portions of a State (that is, Nebraska, Virginia, and Alabama) to a network area dominated by other States. Again, on review of each instance, we concluded that the greater benefit could be realized by maintaining each State wholly within a single network.

The areas of the Forum/NAPHT/RPA proposal that we would change follow:

• *Upstate New York*—We combined Upstate New York with New York City to maintain a single State network area. Upstate New York includes approximately 1,000 beneficiaries, and we believe that the beneficiaries would be better served by maintaining the State wholly within one area.

• *New Jersey, Puerto Rico and the Virgin Islands*—Although Puerto Rico and the Virgin Islands constitute one of the existing areas of their own, they have too few patients to support an autonomous area under the new funding authority. In this case, market areas and referral patterns are also not a substantial consideration. Because of geographic proximity, we considered including them in a network area with Florida. However, we also noted that, for most other purposes, Puerto Rico and the Virgin Islands are included in HHS Region II along with New York and New Jersey. It did not seem appropriate to combine them with New York since New York, as a network area in itself, already would account for the second largest number of patients. Therefore, we propose to combine Puerto Rico and the Virgin Islands with New Jersey. This network constitutes the remainder of HHS Region II. Establishing this area would satisfy the population and State boundary criteria and merge two existing network areas (29 and 32).

• *Western Pennsylvania and Northeastern Ohio*—We propose combining those counties of Western Pennsylvania in existing Network 22 with the counties of Eastern Pennsylvania and Delaware, in existing Network 24, and those with Northeastern Ohio counties in existing Network 22 the rest of Ohio, Indiana, and Kentucky. We believe that conforming to State boundaries would provide for a more appropriate patient population and prudent allocation of network resources.

• *Maryland; Washington DC; West Virginia and Virginia*—We would combine Maryland Virginia, West Virginia, and Washington, DC. That combination would merge the referral areas of two existing networks (23 and 31), conform to State boundaries, and provide a better patient distribution for network funding.

• *Iowa, Kansas, Missouri and Nebraska*—This network area is the same as HHS Region VII and would be established by merging two existing network areas (8 and 9).

• *Michigan*—We would combine the lower peninsula of Michigan with North Dakota, South Dakota, Minnesota, Wisconsin, and the upper peninsula of Michigan, which would conform to State boundaries and long-established patient referral patterns and would provide a more equitable patient distribution. We would remove Nebraska and Iowa from this area (existing Network 8) and combine them with Missouri and Kansas (existing Network 9).

• *California*—Although this single State network would serve a very large patient population, we believe that maintaining a Statewide designation would best serve the beneficiaries' interests. We believe that Statewide networks would be more conducive to developing vocational rehabilitation programs.

• *Florida and Georgia; North Carolina and South Carolina*—The Forum/NAPHT/RPA proposal identified this combination as an acceptable alternative configuration, although not their first choice, for the southeastern region. We would incorporate this option.

While no single plan is without disadvantages, we believe that this configuration would provide the best service to the beneficiaries and the most prudent use of funds possible under the constraints of the law. This revised configuration would meet more than 75 percent of the criteria. All the proposed designations conform to State boundaries, and nearly 65 percent of the proposed areas meet the other key criteria. These designations, upon being finalized, would not be irrevocable, but could be adjusted periodically based on our contract experience with the network organizations and changes in location and number of ESRD beneficiaries. Accordingly, we propose the following network area configurations:

Network Area #1

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

Network Area #2

New York

Network Area #3

New Jersey	Virgin Islands
Puerto Rico	

Network Area #4

Delaware	Pennsylvania

Network Area #5

District of Columbia	Virginia
Maryland	West Virginia

Network Area #6

North Carolina	South Carolina

Network Area #7

Florida	Georgia

Network Area #8

Alabama	Tennessee
Mississippi	

Network Area #9

Indiana	Ohio
Kentucky	

Network Area #10

Illinois

Network Area #11

Michigan
Minnesota
North Dakota
South Dakota
Wisconsin

Network Area #12

Iowa
Kansas
Missouri
Nebraska

Network Area #13

Arkansas
Louisiana
Oklahoma

Network Area #14

Texas

Network Area #15

Arizona
Colorado
New Mexico
Utah
Wyoming

Network Area #16

Alaska
Hawaii
Idaho
Montana
The Trust Territories of the Pacific Islands
Oregon
Washington
American Samoa
Guam

Network Area #17

California

Evaluation Criteria

Section 9335(d)(1) of Pub. L. 99–509 requires us to publish the criteria, standards and procedures that will be used to evaluate the performance of network organizations and the potential capabilities of an applicant organization with respect to the statutory duties of the network organizations. We propose to evaluate the following areas in assessing the capabilities of organizations that submit proposals in response to the request for contract proposals.

I. Understanding of Work and Approach
  A. Analysis of scope and purpose
  B. Technical approach
II Experience
  A. Developing and conducting medical review programs
  B. Managing data and conducting data analysis and studies
  C. Coordinating work groups in the health field
III. Personnel
  A. Project Director
  B. Subordinate staff
IV. Management Plan

Based on our experience in evaluating network funding requests, network performance, and the network on-site assessment program, as well as our experience in evaluating other contractors, including the State survey agencies, we propose to use the following evaluation criteria and performance indicators to assess the effectiveness or potential effectiveness of network organizations. We believe that these criteria would provide an unbiased and effective mechanism for performance assessment. Although these criteria are written as they would apply to applicant organizations, they may also be used to evaluate the actual performance of the existing network organizations.

Criteria	Evaluation indicator
I. Medical Review	
A. *General:*	
The network organization appoints a qualified Medical Review Board.	The network demonstrates an ability to appoint, a medical review board in accordance with the regulatory requirements.
The network develops and adopts criteria for the evaluation of patient care and for encouraging participation in vocational rehabilitation programs and network goals for placing patients in settings for self care and transplantation.	The network demonstrates an ability to adopt criteria and standards for the evaluation of the quality and appropriateness of patient care.
B. *Case Review:*	
The network develops a protocol for the receipt and review of a representative sample of individual patient cases per month.	The network proposes a mechanism to identify individual cases for review against criteria and standards established under I.A. above.
The review of individual cases includes the evaluation of at least: —Individual care plans. —Long term and short term plans, —Appropriateness of treatment modality, —Adverse effects, —Incident reports involving the patient, and —Patient suitability for home dialysis, transplantation and vocational rehabilitation.	The network proposes a mechanism to evaluate these areas.
C. *Systems Assessment:*	
The network successfully identifies specific network problems in the delivery of patient care.	Proposed studies and a written mechanism to implement resultant actions or suggestions.
The organization assists individual facilities and acts to resolve identified problems within the network area.	Proposed activities required of facilities to improve care.
The network is aware of and assists facilities in correcting internal problems that interfere with meeting program requirements. The network documents these activities.	The network proposes policies and procedures to gain voluntary compliance from facilities in meeting HCFA goals and objectives. Recalcitrant facilities will be reported to HCFA.
The newtowrk develops a protocol to select a sample of member facilities for evaluation of patient placement.	The network proposes to use established criteria and standards to evaluate the procedures used at each facility in assessing patients for placement in appropriate treatment settings.
The network heightens both patient and physician interest and awareness of alternative treatment modalities and facilitates entry into those treatment modalities when medically indicated.	The network proposes to initiate patient and professional education and information activities in this area. Other initiatives to increase the percentage of patients or alternative treatments are proposed and implemented.
The network objectively assesses and assists facilities' efforts to correct problems identified through the network medical review program.	The network proposes to develop a review mechanism to determine if benefits are achieved from the medical review programs.
D. *Patient Services Evaluation:*	
The network assists ESRD beneficiaries in obtaining access to all types and levels of care.	The network has mechanisms to assist patients in obtaining access to care with respect to proper treatment settings and treatment schedules compatible with patient employment.
The network is responsive to patient concerns and encourages responsible patient participation. Responsiveness is documented.	Proposed methods of assuring appropriate consumer representation.
The network provides, maintains, and directs an effective patient grievance mechanism: —Standard policies and procedures, —Evaluation of complaints legitimacy, —Rationale for complaints not pursued is documented, —Investigation, —Corrective actions, —Follow-up of corrective action, —Notification of parties concerned and resolution/corrective action is clearly explained, and —The network assumes the responsibility of assuring that a result is obtained.	Documented procedures.
II. Data Activities	
The network maintains a patient and facility specific data system that meets the needs of the network and HCFA requirements.	The proposed data system includes at least the required specific data items as specified by HCFA.
Data handling is physically and administratively structured to assure patient privacy and confidentiality.	Information must be released only in accordance with the provisions of the contract or as otherwise specified in writing by HCFA.
The network data management system provides for collection, analysis, verification and reporting on a timely basis.	The network proposes to meet its obligation in providing information to HCFA as specified in the provisions of the contract or other program instruction.
The network is aware of and assists facilities in correcting internal problems that interfere with meeting program requirements. These activities are documented.	The network proposes policies and procedures to gain voluntary compliance from its facilities in meeting data gathering requirements.
The network data system is adequate to support current activities, including the activities of the medical review board.	The network proposal assures that there will be no curtailment of network activities due to a lack of data or meaningful analysis. A periodic analysis of patient morbidity and mortality trends will be performed. Data findings that may be indicative of inadequate patient care will be tracked and reported to the medical review board.
The network has established a periodic internal audit procedure to assure the effectiveness of its system and its performance in: submitting reports, meeting deadlines, and identifying and correcting errors.	The network proposes procedures to identify and correct problems in its data activities. The network has planning activities to identify and address future daa needs.
III. Program Administration and Management	
The network plans and manages network activities to enhance the achievement of ESRD national priorities.	Contract proposal; deliverables.

Criteria	Evaluation indicator
Record Systems:	
The network maintains all appropriate systems in a standardized manner.	Organization's records must be maintained in accordance with sound business practices.
The network maintains an effective liaison role to the Federal government.	The network proposal clearly indicates that there will be specific individuals in the network organization to coordinate communications with HCFA. The network will adhere to specific reporting mechanisms specified in the contract.
The network arranges, as required, to have audits performed and audit reports sent to HCFA.	External (independent) audit.

III. Request for Proposals

We would develop separately an announcement of a request for proposals (RFP) to solicit prospective contractors as the new ESRD network organizations for the newly designated areas. We would publish the announcement in the Commerce Business Daily (CBD) for 15 consecutive days. During those 15 days, interested parties could request copies of the RFP. On the fifteenth day that the announcement appears in the CBD, we would distribute copies of the RFP to existing organizations that we feel currently have the expertise to perform network organization functions and any other parties that request copies. We would accept proposals within 30 days from the date that we issue copies of the RFP.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed notice such as this that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed notice such as this would not have a significant economic impact on a substantial number of small entities.

Because ESRD networks are such a small activity, with a total FY 1987 budget of less than $6 million, these changes do not meet any of the criteria for a major rule under Executive Order 12291, and a regulatory impact analysis is not required. However, the planned reductions in numbers of network areas and organizations will clearly affect all or almost all existing network organizations. Since these organizations are a creation of the government and are funded by us solely to fulfill the requirements of the law, they are not the kind of small entities to which the Regulatory Flexibility Act is usually considered to apply. Nontheless, they are small organizations and a substantial number of them would experience a significant adverse economic effect as a result of our changes. Therefore, the following discussion, in combination with other sections of this notice, serves as a voluntary regulatory flexibility analysis.

Existing network organizations would be affected only when we actually redesignate network areas and make arrangements with new network organizations. We do not expect the redesignation of network areas to have an adverse affect on ESRD facilities or beneficiaries. Rather, to the extent that network performance relative to available resources is enhanced, the entire ESRD program would benefit.

The criteria for the designation of these new network areas would have a potential impact upon the networks, the beneficiaries, and the facilities. For example, one of the criteria that we propose to use as a basis for area designation is patient population. This criterion would determine the funding level of each network organization because the network funding mechanism is based on the number of treatments provided within the network area. (Section 1881(b)(7) of the Act, as amended by section 9335(j) of Pub. L. 99–509 requires the Secretary to reduce the amount of each composite rate payment for each treatment by $0.50 and provide for the payment of such amount to meet the necessary and proper administrative costs of the network organization in the area where the treatment is provided.)

Following are the area designations and the total number of patients per area:

Network area	Number of patients
1	3,791
2	7,164
3	4,233
4	4,618
5	5,030
6	3,799
7	6,660
8	4,485
9	5,343
10	3,549
11	4,792
12	3,175
13	2,964
14	5,422
15	2,789
16	2,594
17	6,726

For purposes of estimating revenue, we have assumed that the average number of dialysis treatments per week is 2.6 at $.50 per treatment. We assume an allocation of $67.60 per patient per year. The smallest area would thus be allocated about $175,000 and the largest area would be allocated nearly $600,000.

The patient population criterion should ensure that there is a sufficient level of funding to ensure the survival of small network organizations and ensure a basic level of services provided to the beneficiaries and the providers. Appropriate application of this factor could prevent the growth of disparities among the services provided to the ESRD beneficiaries throughout the country.

We intend to replace existing network organizations with a more effective and efficient system. The health care delivery system generally is capable of coordinating the delivery of needed services without reliance on special additional organizations such as the ESRD networks. As a desirable by-product, these changes would reduce the regulatory burden on the suppliers of ESRD services, while continuing to assure the health and safety of Medicare beneficiaries.

In conclusion, although our proposed evaluation criteria may appear to be burdensome, we have made an effort to assure that network areas of sufficient size would perform these functions. Also, these criteria should result in a good management information system defining patients' treatment modalities and a quality control system that justify the costs and burden imposed on the networks and which are expected to benefit the beneficiary and society. We believe that the adverse economic impact of this notice would be limited to the affected entities and their immediate employees. Such adverse consequences as may be anticipated would not be of sufficient magnitude to offset the advantages to be gained by anticipated improvements in efficiency, effectiveness, economy, and quality of care.

V. Response to Comments

Because of the large number of comments we receive on proposed

regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

VI. Collection of Information Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980.

(44 U.S.C. 3501 et seq.)

(Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: February 18, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: March 13, 1987.

Otis R. Bowen,

Secretary.

Appendix—Existing ESRD Network Areas

ESRD network No. 1

American Samoa, Guam, Hawaii, The Trust Territory of the Pacific Islands.

ESRD network No. 2

The State of Alaska.
The State of Idaho.
The State of Montana.
The State of Oregon.
The State of Washington.

ESRD network No. 3

The following counties in Northern California: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, Yuba.

The State of Nevada excluding Clark County which is included in Network area 4.

ESRD network No. 4

The following counties in Southern California: Imperial, Inyo, Kern, Kings, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, Ventura.

The following county in Southern Nevada: Clark.

ESRD network No. 5

The State of Colorado.

The State of Utah excluding the Navaho Reservation portion of San Juan County which is in Network area 6.

The State of Wyoming.

The following counties in the State of Nebraska: Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux.

ESRD network No. 6

The State of Arizona.
The State of New Mexico.
The Navaho Reservation portion of San Juan County, Utah.

ESRD network No. 7

The State of Minnesota.
The State of North Dakota.
The State of South Dakota.

The following counties in the State of Michigan: Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, Ontonagon, Schoolcraft.

The following counties in the State of Wisconsin: Ashland, Bayfield, Burnett, Douglas, Iron, Price, Sawyer, Washburn.

ESRD network No. 8

Composed of:

The State of Iowa.

The State of Nebraska excluding the following counties which are included in Network area 5: Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux.

The following counties in the State of Illinois: Henry, Mercer, Rock Island.

ESRD network No. 9

The State of Kansas.

The State of Missouri excluding the following counties which are included in Network area 18: Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard.

The following counties in the State of Illinois: Clinton, Madison, Monroe, St. Clair.

ESRD network No. 10

The State of Arkansas excluding the following counties which are included in Network area 18: Crittenden, Mississippi.

The State of Oklahoma.

ESRD network No. 11

The State of Texas.

ESRD network No. 12

The State of Louisiana.

ESRD network No. 13

The State of Wisconsin excluding the following counties which are included in Network area 7: Ashland, Bayfield, Burnett, Douglas, Iron, Price, Sawyer, Washburn.

ESRD network No. 14

The State of Michigan excluding the following counties which are included in network area number 7: Alger, Baraga, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, Ontonagon, Schoolcraft.

ESRD network No. 15

The State of Illinois excluding the following counties which are included in Network area 8: Henry, Mercer, Rock Island, and the following counties which are included in Network area 9: Clinton, Madison, Monroe, St. Clair.

ESRD network No. 16

The State of Indiana.

ESRD network No. 17

The State of Kentucky.

The following counties in the State of Ohio: Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Miami, Montgomery, Preble, Shelby, Warren.

ESRD network No. 18

The State of Alabama excluding the following county which is included in network area number 20: Russell.

The State of Mississippi.

The State of Tennessee.

The following counties in the State of Arkansas: Crittenden, Mississippi.

The following counties in the State of Georgia: Catoosa, Dade, Walker.

The following counties in the State of Missouri: Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard.

The following counties in the State of Virginia: Scott, Washington.

ESRD network No. 19

The State of Florida.

ESRD network No. 20

The State of Georgia excluding the following counties which are included in network area number 18: Catoosa, Dade, Walker.

The State of South Carolina.

The following county in the State of Alabama: Russell.

ESRD network No. 21

The State of North Carolina.

ESRD network No. 22

Composed of the State of Ohio excluding the following counties which are included in network area number 17: Adams, Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Miami, Montgomery, Preble, Shelby, Warren.

The following counties of Western Pennsylvania: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Clarion, Crawford, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Lawrence, McKean, Mercer, Potter, Somerset, Venango, Warren, Washington, Westmoreland.

ESRD network No. 23

The District of Columbia.

The following counties in the State of Virginia: Arlington, Fairfax, Loudoun, Prince William.

The following counties in the State of Maryland: Calvert, Charles, Montgomery, Prince Georges, St. Marys.

ESRD network No. 24

The State of Delaware.

The following counties of Eastern Pennsylvania: Adams, Berks, Bucks, Carbon, Centre, Dauphin, Delaware, Franklin, Jefferson, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Chester, Clearfield, Clinton, Columbia, Cumberland, Montgomery, Montour, Northampton, Morthumberland, Perry, Pike, Philadelphia, Schuylkill, Snyder, Union, Wayne, Wyoming, York.

ESRD network No. 25

The following counties of Metropolitan New York: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Westchester.

ESRD network No. 26

The State of New York excluding the following counties which are included in Network area 25: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Westchester.

The following counties in the State of Pennsylvania: Bradford, Susquehanna, Sullivan, Tioga.

ESRD network No. 27

The State of Connecticut.

ESRD network No. 28

The State of Maine.
The State of Massachusetts.
The State of New Hampshire.
The State of Phode Island.
The State of Vermont.

ESRD network No. 29

Puerto Rico, Virgin Islands.

ESRD network No. 30

The State of Virginia excluding the following counties which are included in Network area 18: Scott, Washington, and the following counties which are included in Network area 23: Arlington, Fairfax, Loudoun, Prince William.

The State of West Virginia.

ESRD network No. 31

The State of Maryland excluding the following counties which are included in Network area 23: Calvert, Charles, Montgomery, Prince Georges, St. Mary's

ESRD network No. 32

The State of New Jersey.

[FR Doc. 87-7927 Filed 4-8-87; 8:45 am]
BILLING CODE 4120-03-M

Office of Human Development Services

Intent to Reallot Basic Support and Protection and Advocacy Funds to States for Developmental Disabilities Expenditures; reallotment of funds

AGENCY: Administration on Developmental Disabilities, Office of Human Development Services, HHS.

ACTION: Notice of intent to reallot funds.

SUMMARY: The Administration on Developmental Disabilities herein gives notice of intent to reallot funds which are not available to the Trust Territories of the Pacific and funds which will not be obligated or expended by any other State prior to September 30, 1987. This notice is given in accordance with section 125(d) of the Developmental Disabilities Assistance and Bill of Rights Act. To identify States that do not intend to obligate or expend funds by September 30, 1987, and to identify those States that wish to be considered for receipt of additional funds under this reallotment, each State or Territory must provide the following information in writing:

(1) The amount of funds that will not be obligated or expended by September 30, 1987, under its approved State Plan. If all funds will be obligated, provide a statement to that effect;

(2) The amount of additional funds that can be obligated or expended by September 30, 1987, if any; or

(3) A statement that no additional funds can be used by that date.

This information will be used to calculate the amounts to be reallotted. It should be submitted no later than May 11, 1987 to: Bettye J. Mobley, Grants and Contracts Management Division, Office of Human Development Services, Department of Health and Human Services, 200 Independence Avenue, SW., Room 341F.4 HHH Bldg., Washington, DC 20201.

A State or Territory which does not provide the written notice as described above will not receive a reallocation of additional funds for Fiscal Year 1987.

FOR FURTHER INFORMATION CONTACT: Bettye J. Mobley, (202) 245-7220.

Dated: March 25, 1987.

Robert Stovenour,

Acting Commissioner, Administration on Developmental Disabilities.

Approved: April 3, 1987.

Jean K. Elder,

Assistant Secretary for Human Development Services-Designate.

FR Doc. 87-7885 Filed 4-8-87; 8:45 am]
BILLING CODE 4130-01-M

National Institutes of Health

Animal Resources Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Animal Resources Review Committee, Division of Research Resources, May 19-20, 1987, National Institutes of Health, Building 31, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on May 19 from 1 p.m. to approximately 3 p.m. for a brief staff presentation on the current status of the Animal Resources Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on May 19 from 8:30 a.m. to approximately 12 noon and from approximately 3 p.m. to 5 p.m., and on May 20 from 8:30 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications submitted to the Animal Resources Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources,

National Institutes of Health, Building 31, Room 5B13, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Dr. Carl E. Miller, Executive Secretary of the Animal Resources Review Committee, Division of Research Resources, National Institutes of Health, Building 31, Room 5B55, Bethesda, Maryland 20892, (301) 496–5175, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs No. 13.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: April 2, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–7877 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; National Advisory Council on Aging; Meeting

Pursuant to Pub. L 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, (NIA), on May 19–20, 1987, in Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Tuesday, May 19, from 10:30 a.m. until noon for a status report by the Director, National Institute on Aging, and a report on the role of genetic controls on the aging process. It will be open to the public on Wednesday, May 20, from 9:00 a.m. until adjournment for a report on the NIA Intramural Program, a report on the ad hoc Committee on Program and a report on current and future research activities in health services delivery. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C and sec. 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on May 19 from 1:00 p.m. to recess for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Because this meeting is scheduled so far in advance, it is suggested that you contact Mrs. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 5C05, Bethesda, Maryland 20892, (301/496–9322), for specific information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: April 2, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–7878 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, April 20–22, 1987, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 9:00 a.m. on Monday, April 20 until approximately 4:00 p.m. and will again be open to the public from 9:00 a.m. on Tuesday, April 21, until 4:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 20 from 4:00 p.m. until recess, and again on April 21 from 4:00 p.m. until adjournment on April 22 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496–9322) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.886, Aging Research, National Institutes of Health)

Dated: April 2, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87–7879 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Board of Regents, the Extramural Programs and Pricing Subcommittees; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on May 28–29, 1987, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meetings of the Extramural Programs and the Pricing Subcommittees on the preceding day, May 27, from 2 to 3 p.m., in the 5th-floor Conference Room of the Lister Hill Center Building and from 3 to 4 p.m. in Conference Room "A" of the Library, respectively.

The meeting of the Board will be open to the public from 9 a.m. to 5:15 p.m. on May 28 and from 9 a.m. to appoximately 12 noon on May 29 for administrative reports and program discussions. The entire meeting of the Pricing Subcommittee will be open to the public. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4), 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the entire meeting of the Extramural Programs Subcommittee on May 27, will be closed to the public, and the regular Board meeting on May 29 will be closed from approximately 12 noon to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301–496–6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: April 2, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–7880 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Library of Medicine, on May 18 and 19, 1987, in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will be open to the public from 8:30 a.m. to 4 p.m. on May 18, 1987, and from 8:30 a.m. to approximately 12 noon on May 19, 1987, for the review of research and development programs of the Lister Hill National Center for Biomedical Communications. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 18, from approximately 4 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Daniel R. Masys, Director, Lister Hill National Center for Biomedical Communications, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–4441, will furnish summaries of the meeting, rosters of committee members, and substantive information.

Dated: April 2, 1987.

Betty J. Beveridge,

NIH Committee Management Officer, NIH.

[FR Doc. 87–7881 Filed 4–8–87; 8:45 am]

BILLING CODE 4140–01–M

Research Grants Division Study Section; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following study sections for May 1987, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in secs. 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7441 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	May 1987 meetings	Time	Location
Behavioral and Neurosciences-1, Ms. Janet Cuca, Rm. A13, Tel. 301-496-5352	May 28-29	8:30	Wellington Hotel, Washington, DC.
Behavioral and Neurosciences-2, Ms. Janet Cuca, Rm. A13, Tel. 301-496-5352	May 15	8:30	Room 4, Bldg. 31A, Bethesda, MD.
Biomedical Sciences-1, Dr. Daniel Eskinazi, Rm. A10, Tel. 301-496-1067	May 21-22	8:30	Room 6, Bldg. 31C, Bethesda, MD.
Biomedical Sciences-2, Dr. Charles Baker, Rm. A10, Tel. 301-496-7150	May 20-21	8:30	Holiday Inn, Bethesda, MD.
Biomedical Sciences-3, Mr. Gene Headley, Rm. A25, Tel. 301-496-7287	May 13-14	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences-4, Dr. Charles Baker, Rm. A10, Tel. 301-496-7150	May 13-14	8:30	Ramada Inn, Bethesda, MD.
Biomedical Sciences-5, Dr. Bert Wilson, Rm. A25, Tel. 301-496-7600	May 14-15	8:30	Room 8, Bldg. 31C, Bethesda, MD.
Biomedical Sciences-6, Dr. Melvin Gottlieb, Rm. A10, Tel. 301-496-3117	May 18-20	8:30	Ramada Inn, Bethesda, MD.
Biomedical Sciences-7, Dr. Daniel Eskinzai, Rm. A25, Tel. 301-496-7287	May 11-13	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301-496-7510	May 14-15	8:30	Ramada Inn, Bethesda, MD.
Clinical Sciences-2, Dr. Bernice Lipkin, Rm. A19, Tel. 301-496-7477	May 18-19	8:30	Wellington Hotel, Washington, DC.
Clinical Sciences-3, Dr. Nicholas Mazarella, Rm. A27, Tel. 301-496-1069	May 7	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-4, Dr. Bernice Lipkin, Rm. A19, Tel. 301-496-7477	May 20-21	8:30	Wellington Hotel, Washington, DC.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.983, National Institutes of Health, HHS)

Dated: April 2, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–7882 Filed 4–8–87; 8:45 am]

BILLLNG CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 51 FR 28135, August 5, 1986) is amended to reflect the changes indicated below in the titles of the programs of the National Institute of Neurological and Communicative Disorders and Stroke (NINCDS) (HNQ), and the National Institute of Environmental Health Sciences (NIEHS) (HNV). These changes will reflect the organizations' reporting relationship to the Director, NINCDS, and the Director, NIEHS.

Section HN–B, Organization and Functions is amended by retitling the following programs, as indicated:

(1) Under the heading *National*

Institute of Neurological and Communicative Disorders and Stroke (HNQ):

Former Title	Revised Title
(a) Intramural Research Progam (HNQ-2).	Division of Intramural Research (HNQ2)
(b) Fundamental Neurosciences Program (HNQ-3).	Division of Fundamental Neurosciences (HNQ3)
(c) Communicative Disorders Program (HNQ-4).	Division of Communicative Disorders (HNQ4)
(d) Stroke and Trauma Program (HNQ-6).	Division of Stroke and Trauma (HNQ6)
(e) Extramural Activities Program (HNQ-7).	Division of Extramural Activities (HNQ7)
(f) Convulsive, Developmental, and Neuromuscular Disorders Program (HNQ-8).	Division of Convulsive, Developmental, and Neuromuscular Disorders (HNQ8)
(g) Demyelinating, Atropic, and Dementing Disorders Program (HNQ-9).	Division of Demyelinating, Atropic, and Dementing Disorders (HNQ9)

(2) Under the heading *National Institute of Environmental Health Sciences (HNV):*

Former Title	Revised Title
(a) Intramural Research Program (HNV-2).	Division of Intramural Research (HNV2)
(b) Extramural Program (HNV-3).	Division of Extramural Research and Training (HNV3)
(c) Toxicology Research and Testing Program (HNV-5).	Division of Toxicology Research and Testing (HNV5)
(d) Biometry and Risk Assessment Program (HNV-6).	Division of Biometry and Risk Assessment (HNV6)

Dated: April 1, 1987.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 87-7936 Filed 4-8-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone: (202) 395-7340.

Title: Application Process Contract, 25 CFR 271.

Abstact: Indian tribes can request to enter into a contract or contracts to plan, conduct and administer programs or portions thereof, now administered by the Bureau of Indian Affairs. Information collected in 25 CFR Part 271 is necessary to evaluate the contract application and to monitor and evaluate any contract which is subsequently issued.

Frequency: Upon initial application.

Description of Respondents: Indian tribes desiring to contract Bureau programs.

Annual Responses: 1,430.

Annual Burden Hours: 24,655.

Bureau Clearance Officer: Cathie Martin, (202) 343-3577.

John D. Geary,

Acting Deputy to the Assistant Secretary—Indian Affairs (Tribal Services).

[FR Doc. 87-7842 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[WY-920-07-4111-15; W-75831]

Proposed Reinstatement of Terminated Oil and Gas Lease; Campbell County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-75831 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-75831 effective June 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-7846 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-79753]

Proposed Reinstatement of Terminated Oil and Gas Lease; Converse County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-79753 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-79753 effective July 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-7847 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-97827]

Proposed Reinstatement of Terminated Oil and Gas Lease; Park County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-97827 for lands in Park County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate

lease W-97827 effective February 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-7848 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-22-M

[NV-943-07-4212-10; Nev-058218]

Nevada; Land Reconveyed to the United States; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice provides a correction to the legal description published regarding a reconveyance to the U.S. by the Las Vegas Valley Water District.

EFFECTIVE DATE: April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520 (702) 784-5481.

SUPPLEMENTARY INFORMATION: In Federal Register document 79-36539 on page 68038 in the issue of Wednesday, November 28, 1979, make the following correction:

Line 5 of the legal description should read "162, 163, and 164."

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 87-7871 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-07-4212-22]

Filing of Plat Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

DATES: Filings were effective at 10 a.m., on March 24, 1987.

FOR FURTHER INFORMATION CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Nevada State Office, Bureau of Land Management, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, (702) 784-5484.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada.

Mount Diablo Meridian, Nevada

T. 13 N., R. 19 E.—Dependent Resurvey
T. 14 N., R. 19 E.—Dependent Resurvey and Subdivisions
T. 14 N., R. 20 E.—Dependent Resurvey and Subdivisions
T. 15 N., R. 20 E.—Dependent Resurvey and Subdivisions

The survey of T. 13 N., R. 19 E., was executed to meet certain administrative needs of the Bureau of Indian Affairs. The remaining listed surveys were executed to meet certain administrative needs of the U.S. Forest Service.

Dated: April 1, 1987.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 87-7869 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-HC-M

Arizona, Safford District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, May 15, 1987; 9:00 a.m.

ADDRESS: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463. The agenda for the meeting will include:

1. Instruction Memo on nonuse of Grazing preference.
2. Licensing holdover calves.
3. Update on Wilderness Study areas.
4. Safford District Resource Management Plan Preplanning.
5. San Pedro Bill.
6. BLM management update.
7. Business from the floor.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 10:00 a.m. and 11:00 a.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, May 14, 1987.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: April 2, 1987.

Ray A. Brady,

District Manager.

[FR Doc. 87-7851 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-32-M

[CA-940-07-4520-12 (Group 820)]

Filing of Plat of Survey; Humboldt County, CA

April 1, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Humboldt Meridian, Humboldt County

T. 11 N., R. 4 E. and R. 5 E.

2. This plat representing the dependent resurvey of a portion of the Second Standard Parallel North, along the south boundaries of Township 11 North, Ranges 4 and 5 East, and the metes-and-bounds survey of Tracts 38 and 39, Township 11 North, Range 4 East, Humboldt Meridian, California, under Group No. 820, California, was accepted March 18, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Six Rivers National Forest, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 87-7854 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12 (Group 948)]

Filing of Plat of Survey; Kern County, CA

April 1, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Kern County

T. 25 S., R. 35 E. and T. 25 S., R. 34 E.

2. These plats represent the following:

(a) This plat represents the dependent resurvey of a portion of the south boundary and subdivisional lines, and the survey of the subdivision of sections 34 and 35, Township 25 South, Range 35 East, MDM, California.

(b) This plat represents the dependent resurvey of a portion of the south boundary of Township 25 South, Range 34 East, MDM California.

(c) This plat represents the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, the survey to complete certain subdivisional lines, the survey of the subdivision of sections 3, 4, 5 and 6, and the metes-and-bounds survey of lot 5, in section 3, Township 25 South, Range 35 East, MDM, California.

3. These plats are under Group No. 948, California, and were accepted March 19, 1987.

4. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

5. This plat was executed to meet certain administrative needs of the Sequoia National Forest, U.S. Forest Service.

6. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge, Chief,

Public Information Section.

[FR Doc. 87–7855 Filed 4–8–87; 8:45 a.m]

BILLING CODE 4310–40–M

[NV–930–07–4333–11: NV 5–87–16]

Nevada; Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the Mint 400 Off Highway Vehicle (OHV) Race

ACTION: Temporary closure of certain Public Lands in the Las Vegas District, Clark County, Nevada, on and adjacent to the Mint 400 OHV race course, on May 9, 1987. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittees and right-of-way grantees.

SUPPLEMENTARY INFORMATION: Certain public lands in the Las Vegas District, Clark County, Nevada, will be temporarily closed to public access from 0001 hours, May 9, 1987 to 0600 hours May 10, 1987, to protect persons, property, and public land resources on and adjacent to the 1987 Mint 400 OHV race course. These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1987 Mint 400 OHV race course. The following lands restricted or closed are described as: Hidden Valley area; T. 24 S., R. 61 E., all of sections 4, 5, 7, 8, 17, 18, 19, 20, 25, 30, 31, and 36. Sheep Mountain area; T. 25 S., R. 60 E., all of sections 7, 8, 16, 17, 20, 21, 27, 28, 33, and 34; T. 26 S., R. 60 E., all of sections 2, 3, 10, and 11. McCullough Pass area; T. 25 S., R. 61 E., all of sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 32, T. 25 S., R. 62 E., all of sections 18, 19, and 30. Eldorado Valley area; T. 25 S., R. 62 E., all of sections 10, 14, 15, 16, 17, 19, 20, 22, 23, 27, 28, 33, 34, 35, and 36; T. 25 S., R. 63 E., all of sections 7, 8, 17, 18, 19, 20, 29, 30, and 32. The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM offices: the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126 (702) 388–6403, and the Stateline Resource Area Office, P.O. Box 7384, Las Vegas, Nevada 89125, (702) 388–6627.

Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Dated: April 2, 1987.

Ben F. Collins,

District Manager, Las Vegas District.

[FR Doc. 87–7850 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–HC–M

[NM–940–07–4220–11; NM 10953]

Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture proposes that an 80.00-acre withdrawal for the Upper End Campground (formerly Roberts Recreation Area) continue for an additional 20 years. The land would remain closed to location and entry under the mining laws and would remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by July 8, 1987.

ADDRESS: Comments should be sent to: New Mexico State Director, P. O. Box 1449, Sante Fe, NM 87504–1449.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, 505–988–6589.

The Forest Service, U.S. Department of Agriculture proposes that the existing land withdrawals made by Public Land Order No. 5511 dated August 26, 1975, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Gila National Forest

Upper End Campgound (formerly Lake Roberts Recreation Area).
T. 15 S., R. 13 W.,
Sec. 2, S½NE¼.

The area described contains 80.00 acres in Grant County.

The withdrawal is essential for protection of substantial capital improvements on the Mimbres Ranger District, Gila National Forest. The withdrawal closed the described lands to mining but not mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued, and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: March 27, 1987.

Monte G. Jordan,

Associate State Director.

[FR Doc. 87–7856 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–FB–M

[ID–040–07–4212–08]

Salmon District; Challis MFP Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a category I Amendment to the Challis Management Framework Planning

Document, Challis Resource Area, Salmon District, ID.

SUPPLEMENTARY INFORMATION: In accordance with 43 CFR 1610.2(c) and 1610.3-1(d), Notice is hereby given of intent to prepare a planning amendment document.

This notice also constitutes the scoping notice required by regulations for the National Environmental Policy Act (40 CFR 1507.7).

1. Description of the proposed planning action: The proposed action is to amend the Challis Management Framework Plan (MFP) completed on July 26, 1979. The Category I planning amendment will be based upon existing statutory requirements and policies and will carry out the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA). The MFP amendment and accompanying Environmental Assessment (EA) will provide the basis for modifying the Lands section of the MFP to provide for land tenure adjustment opportunities.

2. Identification of the geographic area involved: The Challis Resource Area is located in Custer County, Idaho.

3. The general types of issues anticipated: The proposed amendment will address changes in the Sales/Exchange sections of the existing MFP resulting from an inventory of the public land.

4. Disciplines to be represented and used to prepare the Lands Amendment would be an interdisciplinary team including but not limited to: Wildlife, range, wilderness, recreation, minerals, archaeology, watershed, endangered species, soils, lands and realty.

5. The kind and extent of public participation opportunities to be provided: Public participation will be carried out through several comment periods to be announced in the federal register, local newspapers and B.L.M. news releases. There is a specific comment period for the Governor to inform and seek comments from state and local agencies.

6. The times, dates and location scheduled or anticipated for any public meetings, hearings, conferences or other gatherings, as known at this time: At this time, no schedule for public meetings has been developed. Most of the public input will be handled through written comments.

7. The name, title, address and telephone numbers of the Bureau of Land Management official who may be contacted for further information: Robert H. Hale, Challis Area Manager, P.O. Box 430, Salmon, Idaho 83467, Phone: (208)-756-5400

8. The location and availability of documents relevant to the planning process: When completed the documents will be available for public review at the Salmon District Office, Highway "93" South, Salmon, Idaho.

Dated: March 4, 1987.

Jerry W. Goodman,

District Manager.

[FR Doc. 87-7853 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-MC-M

[AK-932-07-4220-10; F-14988]

Alaska; Opportunity for Public Hearing and Republication of Proposed Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Air Force has filed an application to withdraw approximately 4,108 acres of public land as a buffer zone for the Indian Mountain Research Site. The lands will remain closed to surface entry, mining and mineral leasing under Public Land Order (PLO) No. 5184. This notice closes the land for up to 2 years from selection by the State of Alaska, the only form of appropriation authorized by PLO 5184.

EFFECTIVE DATE: Comments must be received on or before July 8, 1987.

ADDRESS: comments and meeting requests should be sent to: Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION CONTACT; Sue A. Wolf, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, (907) 271-5477.

On March 23, 1987, the U.S. Army Corps of Engineers, refiled an application for the Department of the Air Force to amend Public Land Order (PLO) No. 5164 of February 28, 1972, and withdraw the following described lands from all forms of appropriation under the public land laws, including the mining but not the mineral leasing laws.

Kateel River Meridian (Unsurveyed)

T. 7 N., R. 24 E.,
- Sec. 13, S2N2S2 and S2S2, those lands lying outside of PLO 3942;
- Sec. 14, S2NW4SW4 and S2S2, those lands lying outside of PLO 3942;
- Sec. 15, S2, S2S2N2;
- Sec. 16, E2SE4;
- Sec. 17, E2NE4, E2E2SE4;
- Sec. 22, those lands lying outside of PLO 5164;
- Sec. 23, those lands lying outside of PLOs 3942 and 5164;
- Sec. 24, those lands lying outside of PLOs 1910, 3942 and 5164;
- Sec. 25, W2E2E2, W2E2, W2, those lands lying outside of PLO 5164;
- Sec. 26, those lands lying outside of PLO 5164;
- Sec. 27, those lands lying outside of PLO 5164;
- Sec. 28, E2NE4NE4;
- Sec. 34, N2N2, those lands lying outside of PLO 5164, N2S2N2;
- Sec. 35, S2NW4NW4, N2N2N2, those lands lying outside of PLO 5164, S2NE4NE4;
- Sec. 36, NW4NE4, N2NW4.

The area described contains approximately 4,108 acres.

A notice of the proposed withdrawal was published in the **Federal Register** on April 12, 1985, Vol. 50, No. 71, page No. 14461, Document No. 85-8873; and corrected on May 23, 1985, Vol. 50, No. 100, page No. 21359, Document No. 85-12393, which segregated the subject lands from operation of the public laws for a period of 2 years (43 CFR 2310.2(a)). This period expired on April 12, 1987, without the necessary action being taken.

The purpose of the withdrawal is to provide a buffer zone around lands previously withdrawn by PLO 5164 as Indian Mountain Air Force Research Site. The two areas will encompass approximately 4,555 acres.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of the publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

All previous comments submitted in connection with the withdrawal application have been included in the record and will be considered in making a final determination on the application.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled, or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with a withdrawal

application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the applicant agency.

Julienne M. Gibbons,

Acting Chief, Branch of Land Resources.

[FR Doc. 87-7865 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-JA-M

[ID-010-07-4333-08]

Off-Road Recreation Vehicle Use; Idaho

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Proposed amendment of Owyhee management framework plan (MFP) to allow off-road recreation vehicle use (ORV) in the Murphy Hills area.

SUMMARY: Notice is hereby given that the BLM-Boise District Office is proposing to amend the Owyhee Management Plan (MFP) to allow ORV use in the Murphy Hills area of the Owyhee Resource Area.

The proposed amendment modifies the original Range Management Decision RM-1.2 which reads as follows: "Prohibit all off-road vehicle (ORV) use, including organized events, on those portions of the spring range (shown on Owyhee Resource Area ORV Implementation Plan Overlay #66e) that are actually being utilized in a given year—April 1 to June 15. Dates and areas are identified on the overlay."

The amended decision would read as follows:

"The decision is to limit all off-road vehicle use, including competitive and noncompetitive (casual use), to travel on existing roads, ways (two-wheel tracks), trails (single tracks) and sand washes, except as otherwise posted, in the Murphy Hills Area year around as shown on the Off-Road Vehicle Management overlay #66e.

The Murphy Hills Area will be intensively managed for off-road vehicle recreation use in conjunction with continued livestock grazing and other resource uses. Recreation management actions (including facilities) will be provided as needed to deal with increasing ORV recreation use and to mitigate impacts to other resources which result from ORV use. Monitoring of ORV use in the area will be done to determine ongoing impacts to other resource values. Additional administrative restrictions would be imposed on ORV use and/or additional recreation facilities would be constructed if monitoring indicates problems."

Availability

Individuals wishing to review the proposed plan amendment can obtain a copy from the Boise District Office, 3948 Development Avenue, Boise, Idaho 83705, or by contacting Daniel "Buddy" Arvizo, Area Manager at the above address or by calling (208) 334-1582.

Protest Procedure

Individuals wishing to protest the proposed plan amendment should send their protest to the Director, Bureau of Land Management, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240. Protests must be received on or before May 15, 1987—The end of the 30 day protest period.

The protest must contain the following information:

—The name, address, telephone number, and the interest of the person filing the protest.
—A statement of the part or parts of the decision being protested.
—A copy of all documents addressing the decision that was submitted during the planning amendment process by the protesting party or any information the protesting party has that is relevant to the protest.
—A short concise statement explaining why the proposed decision is wrong.

If no protests are received, the proposed plan amendment will become the final decision when approved by the Idaho State Director. If protests are received, the decision shall be withheld until final action on the protest has been completed.

J. David Brunner,

District Manager.

[FR Doc. 87-7840 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-GG-M

[MT-070-07-4322-01-ADVB]

Butte District Advisory Council Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Advisory Council will be held Wednesday, and Thursday, May 6 and 7, in the Butte District office conference room, 106 North Parkmont (Industrial Park), Butte, Montana. The meeting will begin at 1:00 p.m. on May 6. The agenda will include (1) election of officers, (2) a discussion of various aspects of the recreation program, (3) a review of the Centennial Mountains wilderness study, (4) the timber program, (5) the district's use of volunteers, (6) an update on the district's weed control program, and (7) an in-depth examination of the district's participation as a pilot district in the Bureau's productivity pilot exercise to develop improved operating procedures.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the district manager.

Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James A. Moorhouse, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

James A. Moorhouse,

District Manager.

April 3, 1987.

[FR Doc. 87-7944 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-DN-M

[OR-010; OR-010-07-4410-10; GP7-129]

Notice of Advisory Council Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of tour May 15, 1987.

SUMMARY: The tour will center around the Plush, OR area including the Warner Potholes Area, Big Rock Pipeline, and the Windy Hollow riparian water structures. The tour will begin at the Lakeview District Office at 8:00 a.m. The public is invited to attend the tour. However, due to the terrain to be traversed, special transportation arrangements are needed. Members of the public who wish to attend the tour and/or make a statement to the Advisory Council should notify the District Office by 5/8/87.

FOR FURTHER INFORMATION CONTACT: Dick Harlow, Lakeview District Office, P.O. Box 151, Lakeview, OR 97630, (Telephone: 503-949-2177).

Dated: April 2, 1987.

Dick Harlow,

Associate District Manager.

[FR Doc. 87-7954 Filed 4-8-87; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7257, Block A–97, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on April 2, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 3, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–7844 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Unocal Oil and Gas Division

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Unocal Oil & Gas Division has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 0204, OCS 0208, and OCS–G 8421, Blocks 38, 42 and 43, respectively, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on March 30, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 1, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–7845 Filed 4–8–87; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31008]

Missouri Pacific Railroad Co.; Trackage Rights; St. Louis Southwestern Railway Co.; Exemption

The St. Louis Southwestern Railway Company (SSW) has agreed to grant local trackage rights to Missouri Pacific Railroad Company (MP) beginning at point of switch 2225+90 (MP milepost 387.58) and ending at point of switch 2281+20 (MP milepost 388.70), a distance of approximately 1.12 miles in Pine Bluff, Jefferson County, AR. The trackage rights agreement became effective on March 24, 1987.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co. —Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: March 27, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–7875 Filed 4–8–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30971]

Wisconsin and Calumet Railroad Co., Inc.; Modified Rail Certificate

On January 2, 1987, a notice was filed by the Wisconsin and Calumet Railroad Company, Inc. (W&C), for a modified certificate of public convenience and necessity under 49 U.S.C. 1150.23. By contract with the Wisconsin River Rail Transit Commission (WRRTC), W&C is authorized to operate the 37.22-mile rail line in the State of Wisconsin between Madison (milepost 138.57) and Janesville (milepost 101.35).

Prior to abandonment, the line was owned and operated by the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (MILW). The line was recommended for abandonment in Docket No. AB-7 (Sub-No. 101), *Chicago, M., St. P., & Pacific R. Co.—Abandonment—Janesville to Madison, WI, and Burlington to Beloit, WI* (not printed), served September 1, 1986; MILW's Reorganization Court thereafter authorized abandonment.

The line was acquired from MILW by the Wisconsin Department of Transportation. Operation of the line is the responsibility of the WRRTC, a public agency within the State of Wisconsin. WRRTC contracted with W&C to operate the line.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: March 31, 1987

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-7876 Filed 4-8-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31016]

Southern Railway Co.; Trackage Rights Granted by Norfolk and Western Railway Co.; Exemption

Norfolk and Western Railway Company (NW) has agreed to grant over-head trackage rights to Southern Railway Company (Southern) between the following points:

(1) between MP N-132.0 at Burkeville, Virginia, and MP N-133.4 at the junction with a connection track between Southern and NW at Burkeville, Virginia, a distance of approximately 1.4 miles;

(2) between MP N-133.4 at the junction with a connection track between Southern and NW at Burkeville, Virginia, and MP N-189.7, which also is MP P-0.0, at Phoebe, Virginia, a distance of approximately 56.3 miles;

(3) between MP P-0.0 at Phoebe, Virginia, and MP P-16.3± at the point of connection between Southern and NW between Kinney and Montview Yards at Lynchburg, Virginia, a distance of approximately 16.3 miles; and

(4) over the Farmville Belt Line between MP B-0.0 at the junction with the NW line described in (2) at Burkeville, Virginia, and MP B-37.0 at the junction with the same NW line at Pamplin, Virginia, a distance of approximately 37 miles.

The trackage rights will be effective on April 6, 1987.

This notice is filed under 49 CFR 1180.2(d) (3) and (7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: April 6, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-8030 Filed 4-8-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Competitive Inspect Statement and Proposed Final Judgment, United States v. Industrial Asphalt, et al.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (a) and (b), the United States publishes below the comment it received on the Competitive Impact Statement and proposed Final Judgment in *United States v. Industrial Asphalt, et al.*,

Civil No. 85-4631 JGD(JRx), United States District Court for the Central District of California, together with the response of the United States to this comment.

Copies of the response and the public comment are available on request for inspection and copying in Room 3233, Antitrust Division, Department of Justice, Washington, DC, and for inspection at the Office of the Clerk of the United States District Court for the Central District of California, in Los Angeles.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

U.S. Department of Justice

Antitrust Division

April 1, 1987.

Mr. F.W. Schafer,

Chevron Corporation, 225 Bush Street, San Francisco, CA 94104-4289

Dear Mr. Schafer: We have received your letter of March 6, 1987, concerning the Competitive Impact Statement and proposed Final Judgment in *United States v. Industrial Asphalt et al., Civil No. 85-4631 JGD(JRx) (C.D. Cal.).*

You state that the purpose of your letter is to correct an implication of a sentence in the Competitive Impact Statement. The implication is that all of the Lakeside plant production of asphalt concrete available to Chevron has been and is being supplied to Industrial Asphalt. You set forth percentages that you say reflect certain sales in 1984, 1985, and 1986 to customers other than Industrial Asphalt.

Assuming that your percentages are correct, our analysis of the competitive effects of the proposed Final Judgment, as set out in the Competitive Impact Statement, nevertheless remains the same. The relevant provision of the proposed decree is intended to make clear that Industrial Asphalt cannot serve as the exclusive marketing agent for, or otherwise control, the Lakeside plant's output.

Sincerely yours,

Gary R. Spratling,

Chief, San Francisco Office.

Chevron Corp.

March 6, 1987.

Mr. Gary R. Spratling,

Chief, San Francisco Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94102

Dear Mr. Spratling: This responds to the notice given in the **Federal Register** dated February 5, 1987 of the opportunity to submit comments on the proposed Final Judgment that would settle the above noted case. Chevron Corporation submits the following information to correct one aspect of the facts as stated in the Justice Department's Competitive Impact Statement.

In Part III of the Competitive Impact Statement it is correctly stated that in 1981 Chevron's predecessor in interest had unsuccessfully attempted to sell its interest in the Lakeside Asphalt plant along with its interests in other such plants that were sold at that time. The next sentence then states:

"Despite the failure to transfer this plant interest along with the rest of the company, Industrial Asphalt Inc. and its successor, the entity created by the subject merger, have continued as the de facto marketers of the output of the plant" (52 FR No. 24, p. 3718).

The implication of the quoted sentence in its context is that all of the Lakeside production of asphalt concrete available to

Chevron U.S.A., which manages this interest, has been and is being supplied to Industrial Asphalt. That is not correct. In fact, although Chevron U.S.A. has continued to make sales to Industrial Asphalt, it also makes substantial sales from the Lakeside plant to other customers. Sales to the latter have risen from 26.5% of Chevron's total sales from the plant in 1984 to 41% and 48% of such sales in 1985 and 1986, respectively.

Chevron Corporation appreciates this opportunity to correct the record in this regard.

Sincerely yours,

Irwin Lichtblau.

[FR Doc. 87-7565 Filed 4-8-87; 8:45 am]

BILLING CODE 4410-01-M

Immigration and Naturalization Service

[INS Number: 1011-87]

Immigration Reform and Control Act; Notice to Employers and Persons Desiring Work Authorizations; Proposed Court Dismissal of Classwide Work Authorization Claims

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Informational notice.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide information for employers about the New Immigration Law and also information to persons interested in obtaining employment authorization. In addition, pursuant to the Court's direction in a proposed stipulated dismissal of the work authorization claims in the case of *Catholic Social Services, Inc., et al. v. Edwin Meese, III,* Civil No. S-86-1343-LKK (Eastern District of California), this notice as part of the **Federal Register** publication of an employer brochure, described in the stipulated dismissal, is intended to constitute notice to the class, as later defined, of the proposed dismissal with prejudice of the classwide work authorization claims.

Introduction

On March 23, 1987, United States District Court Judge Lawrence K. Karlton approved a "Stipulation of Partial Settlement in Class Action" which will result in the dismissal with prejudice against renewal of claims by aliens, who are potentially eligible for benefits under the Immigration Reform and Control Act of 1986, to obtain work authorization papers from the Immigration and Naturalization Service prior to the time when formal "amnesty" applications may be filed. This notice is intended to explain the scope and effect of the proposed dismissal of these claims.

Persons Affected

The individuals affected by the proposed dismissal of the claims to obtaining work authorization from the Service are all those persons included in the nationwide class certified by the Court on November 24, 1986, which includes persons who are potentially eligible for the so-called "amnesty" benefits of the Immigration Reform and Control Act ("Reform Act" or "IRCA") contained in section 245A and section 210 of the Immigration and Nationality Act, as amended by the Reform Act, Pub. L. 99-603, 100 Stat. 3359 (1986). Specifically, the class defined by the Court consists of: "All persons who have been or may be apprehended and have been or may be deported or issued voluntary departure by defendant [Immigration and Naturalization Service] (1) who are believed by defendant to be deportable aliens who can establish a prima facie claim for adjustment of status to temporary resident under section 245A(e)(1) of the INA, as amended, *or;* (2) who are believed by defendant to be deportable or excludable aliens who can establish a nonfrivolous claim for adjustment of status to temporary resident under section 210(d)(1) of the INA, as amended."

Nature of Claims Being Extinguished

The class as certified by the District Court is challenging the Service's implementation of the Reform act in a number of respects in the case of *Catholic Social Services, Inc., et al. v. Edwin Meese, III,* Civil No. S-86-1343-LKK (Eastern District of California). The Seventh and Eighth Claims for Relief in the plaintiffs' Second Amended Complaint, dated February 27, 1987, pertain to the Service's policy of not giving work authorization to aliens who present nonfrivolous or prima facie claims to "amnesty" relief under section 210 and 245A, respectively, if those aliens were apprehended by the Service prior to November 6, 1986 (the date of enactment of the Reform Act) and had been released as of that date, or if those aliens voluntarily surrender themselves to the Service.

More specifically, section 210 of the INA allows certain aliens who have performed at least 90 days of seasonal agricultural services in the United States in the year ending May 1, 1986, to obtain lawful temporary resident, and later lawful permanent resident, status under our immigration laws, while section 245A of the INA provides similar potential benefits to otherwise qualifying aliens who have entered the United States and have continuously resided here in an illegal status since before January 1, 1982. The application period for "special agricultural worker" or "SAW" benefits under section 210 will begin on June 1, 1987, and the "legalization" application period for benefits under section 245A will begin on May 5, 1987.

Both section 210(d)(1) and section 245A(e)(1) of the INA provide for a grant of work authorization to an alien who is otherwise eligible for adjustment of status to lawful temporary resident under these "amnesty" provisions if the alien "is apprehended before the beginning" of the relevant period during which formal applications for these "amnesty" benefits may be filed. The Service's policy under these statutes excludes aliens from eligibility for "preapplication period work authorization" if the aliens were apprehended and released from custody prior to November 6, 1987, or if the aliens merely seek to apply for work authorization by presenting or attempting to surrender themselves to the Service.

In their Second Amended Complaint, the plaintiffs allege that "Defendant's policy and practice of denying employment authorization to aliens eligible for legalization who were apprehended before the enactment of IRCA violates INA section 245A(e) and section 210(d) and the Fifth Amendment Due Process Clause" (Seventh Claim), and that "Defendant's policy and practice of refusing to treat persons who voluntarily surrender to the INS as having been apprehended, and the refusal to grant employment authorization, violates INA section 245A(e) and section 210(d) and the Fifth Amendment Due Process Clause" (Eighth Claim). These claims will be dismissed with prejudice and may not be renewed by any class member in accordance with a stipulation approved by the District Court on March 23, 1987.

The Terms of the Stipulation

The body of the March 23, 1987 "Stipulation Of Partial Settlement In Class Action" provides:

"The parties have agreed to settle plaintiffs' Seventh Claim for Relief ('Failure to Grant Employment Authorization to Persons Apprehended Before Enactment of IRCA') and plaintiffs' Eighth Claim for Relief ('Failure to Grant Employment Authorization to Persons Who Voluntarily Surrender to the INS') in this class action as set forth in Plaintiffs' Second Amended Complaint, as follows:

"1. Defendant shall amend its draft brochure entitled 'Information for Employers About the New Immigration Law,' a copy of which is attached hereto, to provide the following language under the subheading entitled, **'You May Ask the Illegal Alien the Following Questions:':**

'1. Do you claim to qualify for the legalization provisions of the new immigration law?

2. Do you intend to apply for legal status and seek interim work authorization from INS?

If the illegal alien's answers are in the affirmative, the alien is authorized to work and you may hire the alien without fear of penalty until September 1, 1987. The fact that the alien intends to apply for legalization or SAW status should be noted on the verification form (sample attached) designated by the INS when it becomes available.'

The heading to this subsection and the sentence 'If the illegal alien's answers are in the affirmative, the alien is authorized to work and you may hire the alien without fear of penalty until September 1, 1987' shall be in bold print.

"2. Defendant shall submit a copy of the amended brochure to plaintiffs' counsel for review as soon as defendant has redrafted the brochure in final form. If any changes other than those set forth in ¶ 1 have been made, plaintiffs may notify defendant within 48 hours that they elect to withdraw from this stipulation. The plaintiffs may thereupon renew their request for preliminary injunctive relief respecting the Seventh and Eighth Claims for Relief in the Second Amended Complaint.

"3. No later than April 3, 1987, defendant shall cause to be submitted for publication as an informational notice in the **Federal Register** the contents of said brochure as amended pursuant to ¶ 1 of this stipulation. Defendant shall also cause to be published and disseminated to the public 500,000 copies of said amended brochure.

"4. Subject to the Court's approval of this settlement on behalf of the class and plaintiffs' election to go forward after reviewing the amended brochure and defendant's compliance with each of the preceding paragraphs of this stipulation, plaintiffs shall dismiss with prejudice on behalf of the entire class plaintiffs' Seventh and Eighth Claims for Relief as set forth in Plaintiffs' Second Amended Complaint in this action.

"5. Nothing in this stipulation shall be deemed to constitute plaintiffs' approval of defendant's proposed regulations implementing the Immigration Reform and Control Act of 1986. Nor shall anything in this stipulation limit defendant's authority to revise, amend or promulgate regulations under the Administrative Procedure Act. Should defendant hereafter revise, amend or promulgate regulations under the Administrative Procedure Act that are inconsistent with this stipulation, plaintiffs shall have the right to reinstitute their Seventh and Eighth Claims for Relief as set forth in Plaintiffs' Second Amended Complaint in this action.

"6. Upon approval by the Court of this settlement, this settlement shall be binding on defendant, plaintiffs and all members of the class certified by the Court on November 24, 1986."

Further Information

Class members desiring further information should contact one of the following attorneys representing the named plaintiffs or the plaintiff class:

Ralph Santiago Abascal, Stephen Rosenbaum, Jose R. Padilla, California Rural Legal Assistance, Inc., 2111 Mission Street, Suite 401, San Francisco, California 94110, Telephone: (415) 864–3405

Peter A. Schey, National Center for Immigrants' Rights, Inc., 256 South Occidental Boulevard, Los Angeles, California 90057, Telephone: (213) 388–8693

Michael Rubin, Altshuler & Berzon, 177 Post Street, Suite 600, San Francisco, California 94108, Telephone: (415) 421–7151

Robert Rubin, Ignatius Bau, National Refugee Rights Project, San Francisco Lawyers' Committee for Urban Affairs, 301 Mission Street, Suite 400, San Francisco, California 94105, Telephone: (415) 543–9444.

The Brochure for Employers

In accordance with the "Stipulation Of Partial Settlement In Class Action" set forth above, the text of the brochure for employers describing important features of the new law is as follows:

BILLING CODE 4410-10-M

Information for Employers About The New Immigration Law

Information for Employers About The New Immigration Law

The Immigration Reform and Control Act of 1986 will affect all American employers. The Immigration and Naturalization Service (INS) is in the process of preparing regulations and other materials to implement this law. More detailed information and forms will be available in the near future. Until then, this fact sheet will address some issues such as:

- What do I do now?
- What about workers hired before the law passed?
- How do I deal with illegal workers who may qualify to be legalized?

Good faith and common sense in the hiring process can accomplish the goals of the Immigration Reform and Control Act of 1986 and Title VII of the Civil Rights Act of 1964.

General Principles for Employers:

- Commit to employ only U.S. citizens and aliens authorized to work in the United States. This is America's policy and should be yours as well.
- Consider displaying the attached poster to inform your workforce and job applicants of your support of this national policy.
- Follow the same procedures for **all** new hires.
- Do not discharge present employees or refuse to hire new employees based on foreign appearance or language.

Interim Procedures for Employees Hired After November 6, 1986, the date the Immigration Act became law.

From now until June 1, 1987 you should inform, either verbally or in writing, each new job applicant that you:

- Hire only United States citizens and aliens lawfully authorized to work in the United States.
- Will require all new employees to complete the designated employers verification forms when they become available. A one-page model draft form is attached for your information. Final forms will be available by June 1, 1987, when the eligibility verification procedures become effective.

You should ask each **new person hired** the following questions:

1. Are you a U.S. citizen
or
2. Are you an alien lawfully authorized to work in the United States?

We suggest that you note his or her answers on your employment records. There is no requirement to review any documentation at this time.

After June 1, 1987, follow these procedures:

- Hire only citizens and aliens lawfully authorized to work in the United States.
- Continue to advise all new job applicants of your policy to such effect.
- Require all new employees to complete and sign the verification form designated by INS to certify that they are eligible for employment.
- Examine documentation presented by new employees, record information about the documents on the verification form, and sign the form.
- Retain the form for three years or for one year past the end of employment of the individual, whichever is longer.
- If requested, present the form for inspection by INS or Department of Labor officers. No reporting is required.

Considerations Regarding Employees Hired before November 7, 1986.

- There is no requirement to verify status of employees hired before November 7, 1986, but if you choose, you can do so as described in the prior section. If you choose to verify status of pre-November 7, 1986 hires, you should do so for **all** employees.
- No employer sanctions penalties can be imposed against you for merely retaining an illegal alien in your workforce hired before November 7, 1986.
- The fact that an illegal alien was on your payroll before November 7, 1986, does not give him or her any right to legally remain in the United States. Unless such alien is legalized or otherwise obtains permission from the INS to remain in the United States, he or she is subject to apprehension and removal.

Advice To Employers Regarding Employees or Applicants Known to be Illegal Aliens.

Under the new law certain illegal aliens may apply to the INS for legal resident status:

- Legalization program — Residents in the United States since January 1, 1982 in unlawful status may apply beginning May 5, 1987.
- Special Agricultural Worker (SAW) Program — Field workers in perishable agricultural commodities for a 90-day period, from May 1, 1985 – May 1, 1986, may apply beginning June 1, 1987.

Various voluntary organizations, churches, state or local government agencies, unions, business

organizations, community groups, growers associations and individuals will be designated by the INS to advise aliens and help them prepare their applications.

You Should:

- Advise an undocumented alien that legalization and SAW assistance is available from an INS designated entity.
- Assist past and present employees who may qualify by providing documentation of employment history. Employment documentation furnished by employers and presented by legalization applicants will be used only to determine the applicant's eligibility and will not be used by the government against the employer except in cases of application fraud by the employee, or document fraud by the employer.

You May Ask the Illegal Alien the Following Questions:

1. Do you claim to qualify for the legalization provisions of the new immigration law?

2. Do you intend to apply for legal status and seek interim work authorization from INS?

If the illegal alien's answers are in the affirmative, the alien is authorized to work and you may hire the alien without fear of penalty until September 1, 1987. The fact that the alien intends to apply for legalization or SAW status should be noted on the verification form (sample attached) designated by the INS when it becomes available.

For More Information

Further information will be distributed in future months. Please check your telephone directory for **Ask Immigration**. This is available through most local INS offices. Additional information will be available through local community organizations and the news media, or write to:

Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536

Attention: Employer Facts

The American Policy is our Policy:

We Hire Only U.S. Citizens and Lawfully Authorized Alien Workers

Provided by:
The Immigration and Naturalization Service
Washington, D.C. 20536

EMPLOYMENT ELIGIBILITY VERIFICATION

1 EMPLOYEE INFORMATION AND VERIFICATION: (To be completed and signed by employee.)

Name: (Print or Type) Last	First	Middle	Maiden
Address: Street Name and Number	City	State	ZIP Code
Date of Birth (Month/Day/Year)		Social Security Number	

I attest, under penalty of perjury, that I am (check a box):

- ☐ A citizen or national of the United States.
- ☐ An alien lawfully admitted for permanent residence (Alien Number A _____).
- ☐ An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A _____ , or Admission Number _____ , expiration of employment authorization, if any _____).

I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature	Date (Month/Day/Year)

PREPARER/TRANSLATOR CERTIFICATION (If prepared by other than the individual). I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature	Name (Print or Type)		
Address (Street Name and Number)	City	State	Zip Code

2 EMPLOYER REVIEW AND VERIFICATION: (To be completed and signed by employer.)

Examine one document from those in List A and check the correct box, ***or*** examine one document from List B ***and*** one from List C and check the correct boxes. Provide the ***Document Identification Number*** and ***Expiration Date,*** for the document checked in that column.

List A Identity and Employment Eligibility		List B Identity	**and**	List C Employment Eligibility
☐ United States Passport		☐ A State issued driver's license or I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes. (Specify State)_____		☐ Original Social Security Number Card (other than a card stating it is not valid for employment)
☐ Certificate of United States Citizenship		☐ U.S. Military Card		☐ A birth certificate issued by State, county, or municipal authority bearing a seal or other certification
☐ Certificate of Naturalization		☐ Other (Specify document and issuing authority) _____		☐ Unexpired INS Employment Authorization Specify form # _____
☐ Unexpired foreign passport with attached Employment Authorization				
☐ Alien Registration Card with photograph				
Document Identification # _____		***Document Identification*** # _____		***Document Identification*** # _____
Expiration Date (if any) _____		***Expiration Date (if any)*** _____		***Expiration Date (if any)*** _____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine, relate to the individual named, and that the individual, to the best of my knowledge, is authorized to work in the United States.

Signature	Name (Print or Type)	Title
Employer Name	Address	Date

Form I-9 (03/20/87)
OMB No. 1115-0136

U.S. Department of Justice
Immigration and Naturalization Service

Employment Eligibility Verification

NOTICE: Authority for collecting the information on this form is in Title 8, United States Code, Section 1324A. It will be used to verify the individual's eligibility for employment in the United States. Failure to present this form for inspection to officers of the Immigration and Naturalization Service or Department of Labor within the time period specified by regulation, or improper completion or retention of this form may be a violation of 8 USC §1324A and may result in a civil money penalty.

Section 1. Employee's/Preparer's instructions for completing this form.

Instructions for the employee.

All employees, upon being hired, must complete Secton 1 of this form. Any person hired after November 6, 1986 must complete this form. (For the purpose of completion of this form the term "hired" applies to those employed, recruited or referred for a fee.)

All employees must print or type their complete name, address, date of birth, and Social Security Number. The block which correctly indicates the employee's immigration status must be checked. If the second block is checked, the employee's Alien Registration Number must be provided. If the third block is checked, the employee's Alien Registration Number ***or*** Admission Number must be provided, as well as the date of expiration of that status, if it expires.

All employees must sign and date the form.

Instructions for the preparer of the form, if not the employee.

If the employee is assisted with completing this form, the person assisting must certify the form by signing it, and printing or typing his or her complete name and address.

Section 2. Employer's instructions for completing this form.

(For the purpose of completion of this form, the term "employer" applies to employers and those who recruit or refer for a fee.)

Employers must complete this section by examining evidence of identity and employment authorization, and:

- checking the appropriate box in List A ***or*** boxes in both Lists B and C;
- recording the document identification number and expiration date (if any);
- recording the type of form if not specifically identified in the list;
- signing the certification section.

NOTE: Employers are responsible for reverifying employment eligibility of aliens upon expiration of any employment authorization documents, should they desire to continue the alien's employment.

Copies of documentation presented by an individual for the purpose of establishing identity and employment eligibility may be copied and retained for the purpose of complying with the requirements of this form and no other purpose. Any copies of documentation made for this purpose should be maintained with this form.

Employers may photocopy or reprint this form, as necessary, for their use.

RETENTION OF RECORDS.

After completion of this form, it must be retained by the employer during the period beginning on the date of hiring and ending:

- three years after the date of such hiring, or;
- one year after the date the individual's employment is terminated, whichever is later.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0136
Form I-9 (03/20/87)

BILLING CODE 4410-10-C

Reservation

This notice is set forth solely to provide general information and guidance to employers and to provide notice to the class of the proposed dismissal of the classwide work authorization claims as described above. Except as provided in the above-described stipulation, the publication of the Employer Brochure is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter. The publication of the Notice to persons desiring employment authorization from the Immigration and Naturalization Service of the proposed Court dismissal of classwide work authorization claims does affect the claims of certain individuals as described herein.

Dated: April 3, 1987.

Alan C. Nelson,

Commissioner.

[FR Doc. 87-7816 Filed 4-8-87; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information, collection: Grant and Cooperative Agreement Provisions.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Occasionally, Quarterly, Semi-Annually.

5. Who will be required or asked to report: Grantees and Cooperators.

6. An estimate of the number of responses: 166.

7. An estimate of the total number of hours needed to complete the requirement or request: 1,550.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The Division of Contracts uses provisions in its grants and cooperative agreements to ensure: adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the grantee/cooperator are settled.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Richard D. Otis, Jr., (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8585.

Dated at Bethesda, Maryland this 6th day of April 1987.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 87-7930 Filed 4-8-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-454 and 50-455]

Commonwealth Edison Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-37 and NPF-66, issued to Commonwealth Edison Company (the licensee), for operation of Byron Stations, Units 1 and 2, respectively, located in Ogle County, Illinois.

The amendment proposed by the licensee would change Technical Specification 3/4.7.5 to allow plant operation with the essential service water pump discharge temperature greater that 80°F, but less than 98°F, with no cooling tower fans running. Operation in this condition would be allowed during the Ultimate Heat Sink cooling tower performance testing. This proposed amendment is in accordance with the licensee's application dated March 24, 1987.

The Commission has made a proposed determination that the amendments request involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments involve temporary operation of the essential service water (ESW) system with the ESW pump discharge temperature greater than 80°F and no cooling tower fans running. The limiting previously evaluated accident which is dependent upon ultimate heat sink cooling is a large break loss of coolant accident with loss of offsite power. The probability of occurrence of a large break loss of coolant accident with loss of offsite power is not affected by operation of ESW cooling tower fans.

The consequences of a large break loss of coolant accident with loss of offsite power will not be significantly increased by operating the ESW system with ESW pump discharge temperature greater than 80°F and no cooling tower fans running. This is because the heat removal capability of the cooling towers will not be reduced by not placing all four fans in operation at the time the ESW pump discharge temperature exceeds 80°F. It is not necessary to start all four fans when the water reaches 80°F during the cooling tower performance testing because operators involved with conducting this test will continually be aware of ESW temperature during the test. Cooling tower fans will be energized as necessary to avoid exceeding 98°F. In any event, Technical Specification 3/4 7.5 would require a reactor shutdown if 98°F is exceeded.

Operation of the plant in accordance with these proposed amendments will not change the design of the ESW system. Operation of the ESW system will remain within original design limits during performance testing of the cooling towers. Other systems which depend on ESW cooling will not be affected. Consequently, performance of the cooling tower testing with an ESW pump discharge temperature greater than 80°F and no fans running will not create the possibility of a new or different kind of accident.

The capability of the ESW system to remove heat will not be affected by operation of the system in accordance with the proposed amendments. As long as the cooling tower fans are started prior to reaching 98°F, the temperature limit of 98°F will not be exceeded. Therefore, the margin of safety has not been significantly reduced.

Based on the foregoing reasons, the staff believes these proposed amendments involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date page number of this **Federal Register** notice.

By May 11, 1987, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involve no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendmets before the expiration of the 30-day notice period, provided that it final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments reveeived. Should the Commision take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-fire telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Director, Project Directorate No. 3, Division of PWR Licensing-A: petitioner' name and telephone number; date petition was mailed; plant name; and publication data and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael Miller, Isham, Lincoln and Beale, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a) (1) (i) through (v) and 2.714 (d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Dated at Bethesda, Maryland, this 2 day of April 1987.

For the Nuclear Regulatory Commision.

Steven A. Varga,

Director, Project Directorate #3, Division of PWR Licensing-A.

[FR Doc. 87–7932 Filed 4–8–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-247]

Consolidated Edison Co. of New York, Indian Point Nuclear Generating Unit No. 2; Notice of Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-26 issued to Consolidated Edison Company of New York (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 2 located in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

The amendment would consist of changes to the operating license authorizing an extension to expiration date for the Unit 2 Facility Operating License DPR-26 from October 14, 2006 to September 28, 2013.

The amendment to the Technical Specification (TS) is responsive to the licensee's application dated December 27, 1985, as supplemented December 31, 1986, January 27, 1987 and March 3, 1987. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Dates of Facility Operating License No. DPR-26, Consolidated Edison Company of New York, Indian Point Nuclear Generating Unit No. 2, Docket No. 50-247," dated March 31, 1987.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impact of the poposed change in the expiration dates of the Operating Licenses for Indian Point Unit No. 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Relating to Operation of the Indian Point Nuclear Generating Plant Unit No. 2" September 1972, and more recent NRC policy.

Radiological Impacts

Although the population in the vicinity of Indian Point Unit No. 2 has increased, it is lower than projections reviewed in the FES, and the site requirements of 10 CFR Part 100 are still met with regard to Exclusion Area Boundary, Low Populator Zone, and nearest population center distances. In addition, the proposed additional years of reactor operation do not increase the annual public risk for reactor operation.

With regard to normal plant operation, the licensee complies with NRC guidance and requirements for keeping radiation exposure "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate.

Non-Radiological Impacts

The NRC review identified no additional degradation of the habitat surrounding Indian Point Unit No. 2 with regard to indigenous plant and animal species for the additional years of facility operation. In addition, the National Pollutant Discharge Elimination System permit provides additional environmental protection.

Finding of no Significant Impact

The staff has reviewed the proposed change to the expiration date of the Indian Point Unit No. 2 Facility Operating License relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commssion has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see (1) the application for amendments dated December 27, 1985, as supplemented December 31, 1986 and January 27, 1987, (2) the Final Environmental Statement Relating to Operation of Indian Point Nuclear Generating Unit No. 2 issued September 1972, and (3) the Environmental Assessment dated March 31, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, 20555 and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Bethesda, Maryland, this 31st day of March, 1987.

For the Nuclear Regulatory Commisison.

Steven A. Varga,

Director, Project Directorate #3 Division of PWR Licensing-A.

[FR Doc. 87-7931 Filed 4-8-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-24288; File No. SR-AMEX-87-7]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Expansion and Extension of the Near Term Options Expiration Pilot

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 February 13, 1987 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to expand, to the February and March cycles, the stock options pilot program, which provides for four expiration months—including two near-term months. In addition, the Amex proposes to extend for an additional one year, the entire stock options pilot program. The details of these proposals are set forth below in Item 3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In June 1985, in conjunction with the other options exchanges, the Amex implemented a one-year stock option pilot program (see SR-AMEX-85-16) for certain January cycle stock options.

Under the terms of the pilot, the traditional January trading cycle was altered to ensure that (i) one-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all times.

In July 1986, the Exchange received approval to expand the pilot to all Amex-traded January cycle stock options and to extend the pilot an additional six months (See SR-AMEX-86-21).

Approval is now pending to extend the pilot program an additional four months (see SR-AMEX-87-3) to May 1987.

The purpose of the pilot program is to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the trading of the January cycle options and receiving highly favorable comments from both on-floor and off-floor market participants, the Exchange has found the pilot has improved investors' interest in trading such options.

In addition, a consensus has developed both to continue the pilot and to expand it to stock options trading on February and March cycles. Even if the pending four month extension is approved it will be necessary to extend for an additional year the entire pilot program in order to have sufficient time to phase-in and assess the trading of the February and March cycle options.

Therefore, the Exchange proposes to extend the pilot program an additional one year beyond the proposed four month extension and expand the pilot program to include options traded on the February and March cycles. The implementation of the February and March cycles on the pilot program will follow the January cycle paradigm. For March cycle options, the Exchange proposes that it may phase in such options at the March expiration by adding the two near term months (April and May). Similarly, the February cycle options will be phased in at the May expiration by adding June and July expirations. A chart detailing the proposed expansion of the pilot program is set forth in Exhibit 2.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by continuing and expanding a pilot program tailored to meet investors preferences for stock options with near-term expiration cycles. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 30, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 1, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-7955 Filed 4-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. 34-24292; File No. SR-NASD-87-15]

Self-Regulatory Organizations; Granting Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc. to Extend the Period of Effectiveness of the Pilot Program With the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. for the Exchange and Distribution of International Securities Information

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 17, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statesment of the Terms of Substance of the Proposed Rule Change

The National Assosication of Securities Dealers, Inc. ("NASD") hereby requests that the Securities and Exchange Commission ("SEC") extend the period of effectiveness of the NASD's Pilot Program for the exchange of quotation information between The International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("Exchange"), formerly The Stock Exchange, London, England. This matter was the subject of three (3) previous filings made by the NASD, File Nos. SR-NASD-86-4, SR-NADS-86-26 and SR-NASD-86-35. Each of those filings was approved timely by the Commission to enable continuous operation of the Pilot Program from April 22, 1986 through April 3, 1987. The NASD is seeking the extention of this approval for two (2) months until June 3, 1987.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purposes of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The NASD 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 purpose of this rule filing is to obtain an extension of the SEC's temporary approval of the Pilot Program through June 3, 1987. Absent such an extension, the NASD's link with the Exchange will terminate on April 3, 1987.

The Pilot Program, which is the first transatlantic communication link of its kind between major domestic and foreign equities marketplaces, provides a unique opportunity to gather an analyze informatin leading to the efficient and effective development of international trading, related regulatory programs and potentially new systems designs. As currently structured, the Pilot Program provides for the exchange of market data, between the NASD and the Exchange, without charge, on a group of securities of international interest and the transmission of that data by the recipient (NASD or Exchange) to its current subscribers as part of either NASDAO Level ⅔, TOPIC, or TOPICLINE service. When the Pilot Program was originally filed (*i.e.*, File No. SR–NASD–86–4), the NASD requested the SEC's approval of the Pilot for a two year period. At the SEC's request, however, the NASD has acquiesced in the Agency's approval of the Pilot for shorter, consecutive time periods.

This tentative approach is not traceable to any regulatory concern, actual or potential, arising from the linkage's daily operation. Rather, the SEC's reluctance to approve the Pilot Program for a two year term relates to the fact that the broker-dealers able to access quotes disseminated via the linkage are not assessed an additional fee for that access. This issue was raised by one vendor of securities market information (hereinafter referred to as the "Vendor") during the SEC's notice and comment procedure on the original rule filing (File No. SR–NASD–86–4).[1] Vendor claimed that this aspect of the Pilot Program was anticompetitive because Vendor could not obtain access to linkage data (particularly market marker's quotations) from the NASD or the Exchange on the same terms as participating brokers, *i.e.*, at no cost. Further, Vendor maintained that the NASD was utilizing its status as a self-regulatory organization to impede competition from Vendor by virtue of the NASD's receiving quotation information from the Exchange on a preferential basis.

Without conceding the merits of any legal or economic arguments previusly raised by Vendor, the NASD and the Exchange are re-examining the access terms governing the Pilot Program linkage. The Exchange is currently surveying its member firms to gather objective data that is critical to any decision to modify the present access terms for the Pilot Program. Certain information being obtained is intended to respond to specific questions raised by the Commission staff. After the Exchange and the NASD have had an opportunity to analyze this data, it is expected that pertinent information will be incorporated into a filing submitted to the SEC. On the basis of the statistical findings from the Exchange's survey, it might be appropriate for the NASD and the Exchange's to narrow the universe of firms/terminals accessing linkage data at no cost. If so, the Pilot Program would be amended through a subsequent rule filing pursuant to Rule 19b-4 [17 CFR 240.19b-4] under the Securities Exchange Act of 1934 (the "Act").

Accordingly, the NASD requests an extension of the SEC's temporary approval of the Pilot Program for two (2) months until June 3, 1987. This extension should allow sufficient time for completion of the Exchange's survey, analysis of the survey results, and preparation of another rule filing to seek Commission approval of the Pilot Program for a full two year term. During the requested extension, only information on a limited group of securities of international interest will be exchanged on a like kind basis in lieu of separate and offsetting monetary transfers. Further, the NASD and the Exchange will not introduce an automatic execution linkage during the additional period.

[1] *See* letter from Daniel T. Brooks, Cadwalader, Wickersham & Taft, Counsel for Instinet Corporation, to John Wheeler, Secretary , SEC, dated April 16, 1986. *See also* Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 15989 (April 29, 1986).

The NASD believes that the Pilot Program and the requested extension thereof, are consistent with sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. . . ." Section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of approval for the Pilot Program will foster significant progress toward these ends by providing the cooperative regulatory environment and operating experience necessary to realize these goals in the international marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its first release announcing temporary approval of the Pilot Program, the Commission articulated arguments made by Vendor regarding the competitive impact that the Program may have on Vendor. These arguments were summarized in the preceding section. In this regard, the NASD and the Exchange have committed to re-examine the existing access terms, and if appropriate, to narrow the universe of firms and/or terminals permitted access to linkage data at no cost. Hence, the NASD and the Exchange are making a good faith effort to address the perceived competitive concerns raised by Vendor and reiterated by the SEC in its original release. In light of these factors, the NASD believes that no additional competitive burden would be created by the SEC's extension of the Pilot Program.

During the period of extension requested herein, no use will be made of the information exchange for purposes of operation of an automatic execution system. Given the limited numbers of securities involved, the limited use to be made of the information exchange, and

the Association's efforts to address the competitive issues previously raised, the NASD submits that the benefits to be derived from the further extension of the Pilot Program significantly outweigh any perceived burden upon competition and materially advance the purposes to be served under the above-referenced sections of the Act.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received from Members, Participants or Others

Not applicable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**, and, in any event, by April 2, 1987, the last business day before the expiration date for the Pilot Program. The NASD believes that the continuation of the Pilot Program provides an opportunity to develop additional information leading to the efficient and effective development of international trading, related regulatory programs and the potential for new system designs. Accordingly, the NASD believes that good cause exists to accelerate the effectiveness of the rule change to no later than April 2, 1987.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) (C) and (D) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval will avoid an unnecessary interruption of the Pilot Program while allowing the NASD to gather data in response to the Commission staff's inquiries concerning the feasibility of narrowing the universe of firms and terminals accessing linkage data at no cost. The Commission has requested that the NASD gather and analyze the relevant data necessary to amend its permanent rule filing no later than April 15, 1987. Accordingly, the Commission does not believe that the linkage should be terminated while these efforts are ongoing.

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 communications 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. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–87–15 and should be submitted by April 30, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 2, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–7957 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–24293; File No. SR–NSCC–87–2]

Proposed Rule Change by National Securities Clearing Corp.

Relating to an amendment to National Securities Clearing Corporation's ("NSCC") Rules concerning the Interregional Interface Service; 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 February 26, 1987, NSCC 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 NSCC. 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

Amend National Securities Clearing Corporation's ("NSCC") SCC Division Rules as follows:

Interregional Interface Service

Rule 40. The Corporation may establish a service in conjunction with one or more Registered Clearing Agencies to be known as the Interregional Interface Service and may provide such service to any Member which has executed such agreement with the Corporation as the Corporation may from time to time require. The Corporation may enter into such agreements as it may deem appropriate with any other Registered Clearing Agencies which agreements shall govern Interregional Interface Service transactions between the Corporation and such other Registered Clearing Agency. The Corporation may from time to time establish procedures which shall be applicable to the operation of the Interregional Interface Service.

The Interregional Interface Service shall provide a means whereby a Member may settle trades submitted to the Corporation for comparison through another Registered Clearing Agency or may settle trades submitted to another Registered Clearing Agency through the Corporation. Notwithstanding the above, the Corporation and one or more Registered Clearing Agencies may agree upon from time to time to include additional transactions in the Interregional Interface Service and additional services in one or more interfaces between the Corporation and the Registered Clearing Agencies.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC 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

Pursuant to NSCC Rule 40, NSCC may enter into agreements with other

registered clearing agencies to establish an Interregional Interface Service. Rule 40 also provides that such Service shall provide a means whereby trades compared at one clearing agency can be settled at another clearing agency. NSCC offers certain services, however, which do not provide for the settlement of compared trades, but which it believes would be useful to include in interfaces with other clearing agencies. For example, NSCC currently offers the National Municipal Comparison System, which provides for the comparison of transactions in municipal securities, which service currently is provided to regional clearing agencies. In addition, NSCC offers the Automated Customer Account Transfer ("ACAT") Service, which service it intends to provide to regional clearing agencies.

The purpose of the proposed rule change is to amend Rule 40 to make clear that NSCC can establish interfaces with other clearing agencies that offer a variety of services, and that such interfaces are not limited to the settlement of compared trades.

Since the proposed rule change will enhance the linking of clearance and settlement facilities, and thus will enhance the national clearance and settlement system, the rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments on the proposed rule change have been solicited or 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 1934 Act 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, or the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by April 30, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 2, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–7958 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–24294; File No. SR–NASD–87–3]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.

Relating to Last Sale Reports of Transactions in NASDAQ National Market System Securities Executed between 4:00 and 5:00 p.m. Eastern Time.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 12, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and an amendment thereto on March 19, 1987, as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 proposed amendment to Schedule D to the NASD By-Laws would require transactions in NASDAQ National Market System ("NASDAQ/NMS") securities executed between 4:00 p.m. and 5:00 p.m. Eastern Time to be reported through the NASD's Transaction Reporting System no later than 5:00 p.m. Eastern Time.

II. Self-Regulatory Organization's Statements Regarding the Proposed Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change The text of these statements may be examined at the places specified in Item IV below. The NASD 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 proposed amendment to Schedule D to the NASD By-Laws would require last sale reports of transactions in NASDAQ/NMS securities executed between 4:00 p.m. and 5:00 p.m. Eastern Time to be transmitted through the NASD's Transaction Reporting System no later than 5:00 p.m. Eastern Time.

Currently, Section 2 of Part X of Schedule D to the NASD By-Laws requires transactions in NASDAQ/NMS securities that are executed outside the hours of operation of the Transaction Reporting System, that is, outside the hours of 9:30 a.m. and 4:00 p.m. Eastern Time, to be reported to the NASD, on a weekly basis, via Form T. Information submitted on the weekly Form T is not included, however, in daily market activity summaries and is not currently integrated into the NASD's automated surveilliance systems.

The NASD believes that requiring last sale reports of transactions in NASDAQ/NMS securities executed between 4:00 p.m. and 5:00 p.m. Eastern Time to be transmitted through the NASDAQ System by 5:00 p.m. Eastern Time, rather than reported via Form T on a weekly basis, will capture approximately 80% of the transactions that are executed after the close of the market. The proposed requirements will thereby increase the scope and effectiveness of the NASD's automated

surveillance programs and also will permit the dissemination of more accurate information to the news media with respect to the volume of daily trading.

Last sale reports required by the proposed amendments will affect only daily volume totals. They will not affect the calculation of daily high, low, and last prices, which will continue to be established as of 4:01:30 p.m. Eastern Time.

The NASD believes that the proposed amendment is consistent with section 15A(b)(6) of the Act, which provides that the rules of a registered securities association shall be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The NASD also believes that the proposed amendment is consistent with the provisions of section 11A of the Act. Section 11A(a)(1)(C)(iii) states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to broker/dealers and investors of quotation and transaction information. The proposed rule change will expand the amount of last sale transaction information that will be reported directly into the NASDAQ system, thereby enhancing the accuracy and currency of the information available to broker/dealers and investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendment will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, 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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR–NASD–87–3 and should be submitted by April 30, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 2, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–7859 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15660; File No. 812–6566]

Dean Witter Reynolds Inc., et al.; Application for Exchange Privileges and Contingent Deferred Sales Charges

April 2, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order Amending Existing Orders under the Investment Company Act of 1940 ("1940 Act").

Applicants: Dean Witter Reynolds Inc. ("Dean Witter"), Dean Witter California Tax-Free Income Fund, Dean Witter Convertible Securities Trust, Dean Witter Developing Growth Securities Trust, Dean Witter Dividend Growth Securities Inc., Dean Witter Government Securities Plus, Dean Witter High Yield Securities Inc., Dean Witter Industry-Valued Securities Inc., Dean Witter New York Tax-Free Income Fund, Dean Witter Natural Resource Development Securities Inc., Dean Witter Option Income Trust, Dean Witter Tax-Exempt Securities Inc., Dean Witter U.S. Government Securities Trust, Dean Witter World Wide Investment Trust, Dean Witter/Sears Liquid Asset Fund Inc., Dean Witter/Sears Tax-Free Daily Income Fund Inc., Dean Witter/Sears U.S. Government Money Market Trust, and Dean Witter Tax-Advantaged Corporate Trust.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 22(d), and approval of exchange offers requested under section 11(a).

Summary of Application: Applicants seek an order which will permit exchanges of shares to be made among certain registered open-end, management investment companies (the "Funds") which are sold either with contingent deferred sales charges ("CDSL"), front-end sales charges ("FESL"), or without such sales charges ("NL"), providing for a sales charge to be imposed only once in the case of a purchase and subsequent exchange(s). The applicable sales charge would either be imposed at the time of sale (in the case of shares originally purchased in Funds sold with a FESL) or upon the first exchange into a Fund sold with a FESL (in the case of shares originally purchased in Funds sold with a CDSL). The order requested will amend prior SEC orders (Investment Company Act Release Nos. 13126 (March 30, 1983), 13673 (December 14, 1983), and 13782 (February 22, 1984)) ("Prior Orders"), which (1) permit the imposition and waiver of the CDSL, (2) permit exchanges of shares between Dean Witter Funds sold with a CDSL, and (3) permit exchanges of shares between Fund sold with a CDSL and certain money market Funds which are sold without a sales charge.

Filing Date: The application was filed on December 18, 1986, and amended on March 18, 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 April 27, 1987. Request a hearing in writing given 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. Applicants, One World Trade Center, New York, New York 10048 Attention: Sheldon Curtis, Esq.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–3037 or Brion R. Thompson, Special Counsel (202) 272–3016 (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 who may be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1., Dean Witter, a Delaware corporation, is a registered broker-dealer and, through its InterCapital Division, is a registered investment adviser under the Investment Advisers Act of 1940. Dean Witter is the investment manager of Dean Witter World Wide Investment Trust with responsibility for North and South American investments, is the sole investment adviser to the other Funds, and is expected to be the sole investment adviser to Funds established in the future. Dean Witter is the principal underwriter for shares of Funds sold with a CDSL (referred to as the "CDSL Funds"), Funds sold with a FESL (referred to as the "FESL Funds") and Dean Witter Tax-Advantaged Corporate Trust (this Fund and the other Funds sold without a contingent deferred or front-end sales charge referred to as the "NL Funds"). Shares of the CDSL Funds redeemed within six years of purchase are subject to a CDSL under most circumstances. Dean Witter receives the proceeds of the CDSL.

2. Applicants propose to permit exchange among CDSL Funds, FESL Funds and NL Funds, in accordance with (1) the requirements of Section 11(a) and Rule 22d–1 under the 1940 Act, (2) the Prior Orders of the SEC, and (3) the relief requested in the application. Applicants have requested an order under Section 6(c) amending Prior Orders granting exemption from Section 22(d) of the 1940 Act so as to include within the definition of "Free Shares" (which are not subject to any CDSL on their ultimate redemption for cash) shares of CDLS Funds which have been acquired through an exchange of shares of one of the FESL Funds, either directly or with one or more intervening exchanges through NL Funds, including shares of FESL Funds (and of NL Funds, in the case of intervening exchanges) acquired through reinvestment of dividends and capital gains distributions (referred to as "dividend shares"). Applicants have requested approval under section 11(a) of the 1940 Act to permit shares of the CDSL Funds, whether acquired directly or through an exchange, including dividend shares, to be exchanged, either directly or with one or more intervening exchanges through NL Funds, for shares of FESL Funds upon payment of the applicable CDSL. When shares of a CDSL Fund are exchanged into a NL Fund, the investment period, or "year since purchase payment made," will be frozen for the period of time the shareholder remains in the NL Fund. If the shareholder redeems out of the NL Fund, he is then subject to a CDSL which will be computed based upon the period of time the shareholder actually held shares in the CDSL Fund. However, if the shareholder exchanges such shares back into a CDSL Fund from the NL Fund, no CDSL is imposed on such exchange, and the investment period previously frozen when shares were first exchanged for shares of a NL Fund resumes on the date shares of a CDSL Fund are reacquired. Thus, the CDSL is imposed only upon an ultimate redemption and the amount of the applicable charge is based upon the aggregate time the shareholder was invested in a CDSL Fund. There is no limit as to the number of exchanges that are permitted or the number of NL Funds or CDSL Funds into which exchanges can be made, but Applicants may suspend or otherwise restrict operation of the exchange privilege at any time. See the application and Prior Orders for a more complete description of the operation of the CDSL and offers of exchange.

3. Applicants have further requested an order amending and clarifying the terms of a Prior Order (Investment Company Act Release No. 13782, February 22, 1984) (a) to permit deferral of the CDSL when shares of a CDSL Fund are exchanged for shares of a NL Fund (not only a named money market Fund as in that Prior Order), and upon any combination of subsequent exchanges of such NL Fund shares for shares of another NL Fund or CDSL Fund (thereby permitting the CDSL to be imposed on redemption for cash of any shares of any NL Fund so acquired); and (b) to allow the NL Funds, the CDSL Funds, and Dean Witter (i) to offer shares of the NL Funds in exchange for shares of the CDSL Funds (and in exchange for shares of other NL Funds acquired in exchange for shares initially purchased in CDSL Funds) and (ii) to offer shares of the CDSL Funds in exchange for shares of the NL Funds that were acquired through one or more exchanges of shares initially purchased in CDSL Funds.

4. The CDSL Funds presently bear certain distribution expenses pursuant to Plans of Distribution adopted under Rule 12b–1 of the 1940 Act (the "Plans"). Each Plan provides in substance that the CDSL Fund will pay a monthly fee to Dean Witter to compensate it for the services provided in distributing the shares of such Fund. The fees of the presently existing Plans ("12b–1 fees") are paid at the annual rate of either 1%, 0.85% or 0.75% (depending on the CDSL Fund) (and, in the case of Dean Witter U.S. Government Securities Trust, 0.65% on amounts of over $10 billion) of the lesser of (a) the average daily aggregate gross sales of the CDSL Fund's shares since inception of the CDSL Fund (or, in the case of CDSL Funds which adopted Plans after commencement of operations, since the inception of the Plan), not including reinvestments of dividends or capital gains distributions, less the average daily aggregate net asset value of the CDSL Fund's shares redeemed since the CDSL Fund's (Plan's) inception upon which a CDSL has been imposed or waived, or (b) the CDSL Fund's average daily net assets (or, in the case of CDSL Funds which adopted Plans after commencement of operations, the CDSL Fund's average daily net assets attributable to shares issued since commencement of the Plan).

5. Upon any exchange out of a CDSL Fund, the base of aggregate purchase payments of such CDSL Fund (for purposes of calculating its 12b-1 fee) will be reduced on the basis that the investor's Free Shares are exchanged first and, if the exchanged amount exceeds their value, with the assumption that an exchange is made of shares held (or deemed to be held, as a result of prior exchanges) by the investor for the longest period of time within the applicable six-year period. The purchase of shares of a CDSL Fund through an exchange is treated as a new purchase for purposes of the Plan of such CDSL Fund.

6. Applicants now intend to impose a waiting period (presently thirty days, although such period may be changed as Applicants deem appropriate) on the first exchange which may be made after the original purchase of shares of a

CDSL Fund. In evaluating the continued appropriateness of the Plans adopted by the CDSL Funds pursuant to Rule 12b–1 and in making a determination of whether to continue a Plan, the Directors and Trustees of the CDSL Funds will consider, among other things, the direct and indirect expenses that Dean Witter has incurred in promoting sales of shares of a Fund and, in this regard, will review the extent to which the expenses incurred by Dean Witter pursuant to a Plan have, in effect, been offset through the payment of compensation under the Plan by the Fund and through the receipt of the CDSL.

7. The requested order is necessary and appropriate in the public interest, and consistent with the protection investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants would be precluded from offering a complex-wide exchange privilege in the absence of the requested exemptive relief. The proposed offers of exchange are fair and equitable to the Funds and the shareholders of each Fund while at the same time giving shareholders a high degree of flexibility in their financial planning. It also would be fair and equitable and in the public interest and in the interest of shareholders for shares upon which a CDSL or FESL has previously been paid (as described in the application), or which were Free Shares of a CDSL Fund prior to an earlier exchange for shares of a FESL Fund, or which, on such an earlier exchange, were attributable to the appreciation in value of CDSL Fund shares, or which are dividend shares, to be included within the definition of "Free Shares"; that is, for such shares not to be subject to the CDSL. Applicants believe that it is fair to require that a sales charge be paid only *once* in the case of exchanges among investment companies in the same complex, and that it is fair for Free Shares to retain their character as such despite exchanges among FESL Funds and NL Funds. Inasmuch as, under the terms of the Prior Orders, amounts representing the appreciation in value of shares of CDSL Funds become Free Shares on an exchange to another CDSL Fund, Applicants submit that it is also fair to include shares exchanged from FESL Funds which are attributable to such appreciation within the definition of Free Shares.

8. Applicants also believe that it would be fair and equitable and in the public interest and in the interest of shareholders to permit an offer of exchange whereby shares of the CDSL Funds upon which neither a FESL nor CDSL has been paid and which would otherwise be subject to a CDSL on their ultimate redemption for cash to be exchanged, either directly or with one or more intervening exchanges through NL Funds, for shares of FESL Funds upon payment of the applicable CDSL. Applicants state that it is fair for shareholders of a CDSL Fund to pay an applicable CDSL on an exchange to a FESL Fund because investors purchasing shares of a FESL Fund directly would pay a sales charge in connection with that purchase, and permitting an exchange under these conditions provides such investor with additional investment flexibility without detriment to the investor or the Funds.

9. Applicants finally submit that expanding the scope of the Prior Orders to encompass existing and future NL Funds, and clarifying the Prior Orders' terms encompassing any combination of subsequent exchanges of NL Fund shares (acquired in exchange for shares of a CDSL Fund) for shares of another NL Fund or CDSL Fund, is fully consistent with the basis upon which the Prior Orders were granted.

Applicants' Conditions:

If the requested order is granted, the Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d–1 under the 1940 Act.

2. Applicants will comply with the provisions of proposed Rule 11a–3 under the 1940 Act when and if it is adopted by the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–7962 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–24364]

Filings Under the Public Utility Holding Company; Application

April 2, 1987.

Notice is hereby given that the following filing(s) has/have 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 April 27, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company (70–7046)

National Fuel Gas Company ("National"), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company, and its subsidiary, Seneca Resources Corporation ("Seneca"), 10 Lafayette Square, Buffalo, New York 14203, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order in this proceeding, dated January 15, 1987 (HCAR No. 24258), National's authority to issue and sell prior to December 31, 1986, in one or more transactions pursuant to Rule 415 under the Securities Act of 1933, at competitive bidding, an aggregate of not to exceed one million authorized but unissued shares of its common stock, no par value ("Common Stock") was extended through December 31, 1988. Alternatively, National was authorized to issue and sell all or a portion of the Common Stock through a continuous offering shelf registration.

National rejected the only two competitive bids received for the sale of the Common Stock, and is persuaded that in light of the current market for its common stock, the fact that such market is believed to consist of a limited number of small institutional investors, the need for a large retail effort to attract many buyers and the inherent time delays associated with competitive bidding, the interests of National's investors and the public require National to utilize the marketing capability of a single comprehensive underwriting group to arrange a public offering. National, therefore, requests an

exception from the Commission's competitive bidding rules under Rules 50(a)(5), and permission to begin negotiating the terms and conditions, and fees and expenses for such offering. It may do so.

The Southern Company (70–7200)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a post effective amendment to its declaration filed pursuant to sections 6(a) and 7 of the Act and Rule 50 thereunder.

An order was issued in this proceeding on March 3, 1986 (HCAR No. 24038) authorizing Southern to issue and sell up to 2,500,000 shares of authorized common stock at competitive bidding, and reserving jurisdiction over the issuance and sale of the remaining 7,500,000 shares pending completion of the record. Southern stated that it may later request that all or part of the stock sales be excepted from the competitive bidding requirements of Rule 50 should circumstances develop which make such an exception in the best interest of Southern and its investors and consumers. Southern now proposes that the authorization of March 3, 1986 be extended through March 31, 1989.

Hawaii and Electric Industries, Inc., et al. (70–7359)

Hawaiian Electric Industries, Inc. ("Industries"), a Hawaii corporation and an exempt holding company under section 3(a)(1) of the act and Rule 2 promulgated thereunder, and its electric utility subsidiary company, Hawaiian Electric Renewable Systems, Inc. ("HERS"), both of 900 Richards Street, Honolulu, Hawaii 96813, have filed an application pursuant to sections 9(a)(2) and 10 of the Act.

Industries owns all of the outstanding common stock of Hawaiian Electric Company, Inc ("HECO"), a Hawaii corporation and an operating public utility on the Island of Oahu. HECO has two wholly owned electric utility subsidiaries, Hawaii Electric Light Company, Inc. ("HELCO"), a Hawaii coporation, which provides electric service to the Island of Hawaii, and Maui Electric Company, Limited, which provides electric service to the Islands of Maui and Lanai. All of these islands are within the State of Hawaii. Industries owns all of the outstanding common stock of HERS, a Hawaii corporation organized to own and/or operate alternate energy and cogeneration facilities. HERS owns and operates Hawaii's largest windfarm at Kahuku on the Island of Oahu. Industries has other subsidiaries which are engaged in investment, real estate development, and inter-island transportation services.

HERS proposes to acquire all of the capital stock of Lalamilo ventures, Inc. ("LVI"), a California corporation, for a nominal consideration ($1.00). LVI owns and operates a windfarm situated at Waikoloa on the Island of Hawaii, consisting of 120 wind machines which were installed in 1985 with a capacity of 2300 kilowatts. LVI presently sells all of the electric energy generated at its windfarm to an agency of the County of Hawaii and HELCO. Prior to the acquisition of the capital stock of LVI by HERS, LVI will return to its present sole stockholder approximately $117,000 on deposit in an escrow account to secure performance of an agreement between LVI and the County of Hawaii. Immediately after the acquisition of the capital stock of LVI by HERS, LVI will be merged into a wholly owned subsidiary of HERS incorporated under the laws of Hawaii.

It is stated that the transaction is consistent with the program of Industries to have a number of subsidiaries engaged in alternate energy projects, including wind energy. It is also stated that LVI has a substantial tax basis in its assets and thus all of the capital stock of LVI is being acquired rather than its assets.

Jersey Central Power and Light Company (70–7368)

Jersey Central Power and Light Company ("Jersey Central"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application pursuant to section 6(b) of the Act.

Jersey Central proposes to issue a secured note ("Note") for up to $2.8 million, pursuant to a term-loan agreement with Horizon Bank, at an annual interest rate of 7.8%, in order to finance the cash purchase of approximately 9.7 acres and two buildings that Jersey Central currently occupies as its corporate headquarters ("Headquarters") under a lease from Northwestern Mutual Life Insurance Company. The Note will: (i) Mature on June 1, 1992; (ii) be payable in installments over five years; (iii) be prepayable from time-to-time at various premiums above the amount of such prepayment; and (iv) be secured by a purchase money first mortgage lien on the Headquarters. Jersey Central's first mortgage bond indenture provides that the lien of that indenture will constitute a second lien on the property.

Southern Electric Generating Company, et al. (70–7371)

Southern Electric Generating Company ("SEGCO"), 600 North 18th St., Birmingham, Alabama 35291, and its parents, Alabama Power Company ("Alabama"), 600 North 18th St., Birmingham, Alabama 35291 and Georgia Power Company ("Georgia"), 333 Piedmont Avenue NE., Atlanta, Georgia 30308, subsidiaries of the Southern Company, a registered holding company, have filed an application-declaration pursuant to section 9(a), 10, and 12(b) of the Act and Rule 45 thereunder.

By prior Commission order, SEGCO was authorized to amend its Installment Sales Agreement ("Agreement"), dated June 1, 1975, with The Industrial Developmental Board of the Town of Wilsonville, Alabama ("Board"), providing for the financing of the acquisition of pollution control facilities for its Gaston Steam Plant, by causing the Board to issue and sell $8.6 million of pollution control revenue bonds ("Series B") (HCAR No. 22641, September 21, 1982). The Series B bonds bear an 11% interest rate, and nature on June 1, 1982. SEGCO now proposes to further amend the Agreement to provide for the refunding of the Series B bonds with Series C bonds ("Bonds"). The Bonds will mature from one to thirty years from the date of issuance, and may contain a mandatory sinking fund and may be redeemable in ten years from issuance.

Alabama will guarantee SEGCO's performance under the Agreement, and Georgia will agree to reimburse Alabama for payments made under the guaranty in proportion to Georgia's *pro rata* ownership share of SEGCO's equity securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirly E. Hollis,

Assistant Secretary.

[FR Doc. 87–7961 Filed 4–8–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87–024]

Chemical Transportation Advisory Committee; Reestablishment

SUMMARY: USCG announces the reestablishment of the Chemical Transportation Advisory Committee.

The purpose of the Committee is to provide advice and consultation to the Coast Guard's Office of Marine Safety, Security and Environmental Protection with respect to water transportation of hazardous materials in bulk.

FOR FURTHER INFORMATION CONTACT: Commander Robert Tanner, U.S. Coast Guard (G-MTH-1), Washington, DC 20593-0001. (202) 267-1577.

Dated: April 3, 1987.

W.P. Hewel,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 87-7914 Filed 4-8-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD 87-021]

Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of the fourteenth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 28, 1987 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the Committee.
3. Presentation of any additional new items for consideration of the Committee.
4. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander D. F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: March 19, 1987.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 87-7917 Filed 4-8-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD 87-023]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 7, 1987 at the Houston Yacht Club, 3620 Miramar Drive, LaPorte, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. Individuals making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander D.F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: March 19, 1987.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 87-7915 Filed 4-8-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD 87-022]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 7, 1987 at the Houston Yacht Club, 3620 Miramar Drive, LaPorte, Texas. The meeting is scheduled to begin at 9:00 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. Individuals making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander D.F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: April 1, 1987.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 87-7916 Filed 4-8-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD 87-019]

Measures to Prevent Unlawful Acts Against Passengers and Crews On Board Ships

March 31, 1987.

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: This Notice publishes the International Maritime Organization Circular 443, 1986, on Measures to Prevent Unlawful Acts Against Passengers and Crews On Board Ships. Circular 443 contains a set of recommended preventative security measures which should be utilized by both passenger vessels and the facilities which serve them, to increase the safety and security of passengers and crews. Adoption of these guidelines, in coordination with increased emphasis on passenger terminal and vessel security by Coast Guard Captain of the Port offices, will provide improved levels of security for passenger vessel operations in U.S. ports.

FOR FURTHER INFORMATION CONTACT: LT Patrick T. KEANE, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-2) at (202) 267-0475.

DRAFTING INFORMATION: The principal person involved in drafting this Notice is Lieutenant Patrick T. KEANE, Project Manager, Office of Marine Safety, Security and Environmental Protection (G-MPS-2).

Background

The October 7th, 1985 hijacking of the ACHILLE LAURO and murder of a U.S. citizen, resulted in the Coast Guard and State Department drafting a resolution for submission to the International Maritime Organization (IMO) Assembly in London in November 1985 on measures to protect passengers and crews onboard ships. The measures were reviewed and endorsed by both the Facilitation and Legal Committees of the IMO in March and April 1986, respectively. On September 12, 1986 the IMO unanimously adopted recommended preventative security measures. The measures are published in IMO Circular 443 dated 26 SEP 86.

The purpose of the IMO measures is to assist member governments in reviewing and strengthening port and vessel security. They include detailed and practical technical measures which may be employed to ensure the security of passengers and crews on board ships by reducing the vulnerability to unlawful acts.

Concurrently, the Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. 99-399, August 26, 1986, was enacted. This legislation specifically recognizes the international aspects of terrorism and the desirability of internationlly coordinated action. Title IX of this law, the International Maritime And Port Security Act addresses maritime terrorism and is codified in Title 46, U.S. Code at 46 U.S.C. App. 1801 et seq. and 33 U.S.C. 1226. In addition to promoting efforts of the International Maritime Organization to develop measures to improve international seaport and shipboard security, it requires the Secretary of Transportation to evaluate the security measures and the threat of terrorism at U.S. and foreign ports. It amends existing legislation (Ports And Waterways Safety Act of 1972) to allow the Secretary of Transportation to take action to prevent or respond to an act of terrorism, which includes the authority to carry out or require specific measures and procedures.

The Secretary of Transportation, in consultation with the Secretary of State must implement a plan to assess the effectiveness of security at foreign ports. The Secretary of State is required to issue travel advisories with respect to those ports which the Secretary of Transportation finds have inadequate security. The President may suspend the right of any passenger vessel common carrier to operate to and from, and the right of any U.S. passenger vessel to utilize, any port in a foreign nation which permits the use of territory under its jurisdiction for terrorists or terrorist groups which knowingly use the illegal seizure of passenger vessels or threat thereof as an instrument of policy.

The IMO Measures are intended to be applicable to passenger ships making international voyages of 24 hours or more and the facilities which service them, however, they provide guidance on measures that could be applicable to all port and vessel operations. They address measures and equipment to prevent weapons or other dangerous devices being taken aboard ships, use of restricted access on terminals and on board ships, designation of security personnel, their evaluation and training, and detailed survey and inspection procedures and planning.

Implementation Strategy

Since all U.S. ports and passenger vessels are unique, the Coast Guard feels that an antiterrorism preventative security program can best be implemented on a port-by-port and ship-by-ship basis, utilizing the IMO approved measures as guidelines. The local Coast Guard Captains of the Port have excellent rapport and liaison with the local port officials and vessel owners and are therefore in a position to coordinate voluntary compliance with the IMO measures. Internal Coast Guard program guidelines and policy are being established and promulgated by the Port Safety and Security Program Director in U.S. Coast Guard Headquarters. A program of mandatory regulatory requirements under the authority of 33 U.S.C. 1226 is not considered necessary or appropriate at this time.

Recognizing the need for implementation of preventative security measures on a local basis, the Coast Guard is assisting the cooperative efforts of vessel operators and port authority/terminal operators. The Coast Guard has established local Port Readiness Committees (PRCs), for liaison with the participating agencies concerning the issues of port security. The PRC's include a Security Sub-Committee, with members from the maritime industry, to coordinate security and security operations including waterside security, shoreside security, personnel access control, physical security, onboard vessel security, and intelligence.

Through these committees, Coast Guard Captains of the Port are tasked with assisting industry in implementing the procedures and equipment outlined in the IMO Measures. Periodic security assessments are being conducted to evaluate existing procedures and equipment and identify potential improvements.

The maritime industry has been cooperating in the Coast Guard's efforts to reduce the risk of terrorism in U.S. ports. Many U.S. cruise ship terminals and the passenger vessels using them have already designated security personnel and are developing contingency plans in accordance with the Measures and it is expected that the remaining ships and terminals will be doing so in the near future.

Ports and vessels should now be conducting a Security Survey as outlined in the Measures (Annex 1), or an appropriate equivalent. Action then needs to be taken utilizing Security Measures and Procedures (Annex 2) of the IMO Measures to identify and

correct those deficiencies discovered by the surveys.

It is anticipated that voluntary action by ports and vessels to reduce vulnerability to terrorist acts will preclude the need for development of mandatory regulations to meet this threat. To facilitate these voluntary actions and to provide information to the travel industry and public on the measures being taken, IMO Circular 443 is reprinted as an attachment to this notice.

Dated: April 3, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships

1. Introduction

1.1 Assembly resolution A.584(14) directed that internationally agreed measures should be developed, on a priority basis, by the Maritime Safety Committee to ensure the security of passengers and crews on board ships and authorized the Maritime Safety Committee to request the Secretary-General to issue a circular containing information on the agreed measures to governments, organizations concerned and interested parties for their consideration and adoption.

1.2 The text of Assembly resolution A.584(14) is attached at appendix 1.

2. Definitions

For the purpose of these measures:

.1 *Designated Authority* means the organization or organizations or the administration or administrations identified by or within the Government as responsible for ensuring the development, implementation and maintenance of port facility security plans or flag State ship security plans, or both.

.2 *Port Facility* means a location within a port at which commercial maritime activities occur affecting ships covered by these measures.

.3 *Passenger Terminal* means any area within the port facility which is used for the assembling, processing, embarking and disembarking of passengers and baggage.

.4 *Port Facility Security Plan* means a comprehensive written plan for a port facility which identifies, *inter alia*, regulations, programmes, measures and procedures necessary to prevent unlawful acts which threaten the passengers and crews on board ships.

.5 *Port Facility Security Officer* means the person in a port responsible for the development, implementation and maintenance of the port facility security plan and for liaison with the ships' security officers.

.6 *Operator* means the company or representative of the company which maintains operational control over the ship while at sea or dockside.

.7 *Ship Security Plan* means a written plan developed under the authority of the operator to ensure the application of measures on board ship which are designed to prevent unlawful acts which threaten passengers and crews on board ships.

.8 *Operator Security Officer* [1] means the person designated by the operator to develop and maintain the ship security plan and liaise with the port facility security officer.

.9 *Ship Security Officer* [1] means the master or the person on board the ship responsible to the master and operator for on-board security, including implementation and maintenance of the ship security plan and for liaison with the port facility security officer.

3. General Provisions

3.1 Governments, port authorities, administrations, shipowners, operators, shipmasters and crews should take all appropriate measures against unlawful acts threatening passengers and crews on board ships. The measures implemented should take into account the current assessment of the likely threat together with local conditions and circumstances.

3.2 It is desirable that there be appropriate legislation or regulations which, *inter alia*, could provide penalties for persons gaining or attempting to gain unauthorized access to the port facility and persons committing unlawful acts against passengers or crews on board ships. Governments should review their national legislation, regulations and guidance to determine their adequacy to maintain security on board ships.

3.3 The measures contained in this document are intended for application to passenger ships engaged on international voyages [2] of 24 hours or more and the port facilities which serve them. Certain of these measures may, however, also be appropriate for application to other ships or port facilities if the circumstances so warrant.

3.4 Governments should identify a designated authority responsible to ensure the development, implementation and maintenance of ship and port facility security plans. The designated authority should co-ordinate with other relevant domestic agencies to ensure that specific roles and functions of other agencies and departments are agreed and implemented.

3.5 Governments should notify the Secretary General of progress made in the implementation of security measures. Any useful information, which might assist other governments in their implementation of measures, on any difficulties and problems which arose and were overcome during implementation of the security measures, should be forwarded with the notification. The designated authority should cooperate with similar authorities of other governments in the exchange of appropriate information.

3.6 Governments concerned with an act of unlawful interference should provide the Organization with all pertinent information concerning the security aspects of the act of unlawful interference as soon as practicable after the act is resolved. Further information and a reporting format is given in appendix 2.

3.7 In the process of implementing these measures, all efforts should be made to avoid undue interference with passenger services and take into account applicable international conventions.

3.8 Governments and port authorities should ensure the application of these measures to ships in a fair manner.

4. Port Facility Security Plan

4.1 Each port facility should develop and maintain an appropriate port facility security plan adequate for local circumstances and conditions and adequate for the anticipated maritime traffic and the number of passengers likely to be involved.

4.2 The port facility security plan should provide for measures and equipment as necessary to prevent weapons or any other dangerous devices, the carriage of which is not authorized, from being introduced by any means whatsoever on board ships.

4.3 The port facility security plan should establish measures for the prevention of unauthorized access to the ship and to restricted areas of the passenger terminal.

4.4 The port facility security plan should provide for the evaluation, before they are employed, of all persons responsible for any aspect of security.

---

[1] The operator security officer functions may be assigned to the ship security officer on board the ship.

[1] The operator security officer functions may be assigned to the ship security officer on board the ship.

[2] Voyages invlude all segmented voyages.

4.5 A port facility security officer should be appointed for each port facility. The port facility security plan should identify the security officer for that port facility.

4.6 The responsibilities of the port facility security officer should include, but not be limited to:

.1 Conducting an initial comprehensive security survey in order to prepare a port facility security plan, and thereafter regular subsequent security inspections of the port facility to ensure continuation of appropriate security measures;

.2 Implementing the port facility security plan;

.3 Recommending modifications to the port facility security plan to correct deficiencies and satisfy the security requirements of the individual port facility;

.4 Encouraging security awareness and vigilance;

.5 Ensuring adequate training for personnel responsible for security;

.6 Maintaining records of occurrences of unlawful acts which affect the operations of the port facility;

.7 Coordinating implementation of the port facility security plan with the competent operator security officers; and

.8 Coordinating with other national and international security services, as appropriate.

4.7 Security measures and procedures should be applied at passenger terminals in such a manner as to cause a minimum of interference with, or delay to, passenger services, taking into account the ship security plan.

5. Ship Security Plan

5.1 A ship security plan should be developed for each ship. The plan should be sufficiently flexibile to take into account the level of security reflected in the port facility security plan for each port at which the ship intends to call.

5.2 The ship security plan should include measures and equipment as necessary to prevent weapons or any other dangerous devices, the carriage of which is not authorized, from being introduced by any means whatsoever on board a ship.

5.3 The ship security plan should establish measures for the prevention of unauthorized access to the ship and to restricted areas on board.

5.4 A ship security officer should be appointed on each ship. The ship security plan should identify the ship security officer.

5.5 The operator security officer should be responsible for, but not be limited to:

.1 Conducting an initial comprehensive security survey and thereafter regular subsequent inspections of the ship;

.2 Developing and maintaining the ship security plan;

.3 Modifying the ship security plan to correct deficiencies and satisfy the security requirements of the individual ship;

.4 Encouraging security awareness and vigilance;

.5 Ensuring adequate training for personnel responsible for security; and

.6 Co-ordinating implementation of the ship security plan with the competent port facility security officer.

5.6 The ship security officer should be responsibile for, but not limited to:

.1 Regular inspections of the ship;

.2 Implementing and maintaining the ship security plan;

.3 Proposing modifications to the ship security plan to correct deficiencies and satisfy the security requirements of the ship;

.4 Encouraging security awareness and vigilance on board;

.5 Ensuring that adequate training has been provided for personnel responsible for security;

.6 Reporting all occurrences or suspected occurrences of unlawful acts to the port facility security officer and ensuring that the report is forwarded, through the master, to the operator for submission to the ship's flag State's designated authority; and

.7 Co-ordinating implementation of the ship security plan with the competent port facility security officer.

6. Annexes

The annexes attached hereto contain information which may be useful when developing or improving security measures.

Appendix 1—Resolution A.584(14)

Adopted on 20 November 1985.

Measures to Prevent Unlawful Acts Which Threaten the Safety of Ships and the Security of Their Passengers and Crews

The Assembly,

Recalling Article 1 and Article 15(j) of the Convention on the International Maritime Organization concerning the purposes of the Organization and the functions of the Assembly in relation to regulations and guidelines concerning maritime safety,

Noting with great concern the danger to passengers and crews resulting from the increasing number of incidents involving piracy, armed robbery and other unlawful acts against or on board ships, including small craft, both at anchor and under way,

Recalling resolution A.545(13) which urged action to initiate a series of measures to combat acts of piracy and armed robbery against ships and small craft at sea,

Recognizing the need for the Organization to assist in the formulation of internationally agreed technical measures to improve security and reduce the risk to the lives of passengers and crews on board ships,

1. Calls upon all Governments, port authorities and administrations, shipowners, ship operators, shipmasters and crews to take, as soon as possible, steps to review and, as necessary, strengthen port and on-board security;

2. Directs the Maritime Safety Committee, in co-operation with other committees, as required, to develop, on a priority basis, detailed and practical technical measures, including both shoreside and shipboard measures, which may be employed by Governments, port authorities and administrations, shipowners, ship operators, shipmasters and crews to ensure the security of passengers and crews on board ships;

3. Invites the Maritime Safety Committee to take note of the work of the International Civil Aviation Organization in the development of standards and recommended practices for airport and aircraft security;

4. Authorizes the Maritime Safety Committee to request the Secretary-General to issue a circular containing information on the measures developed by the Committee to Governments, organizations concerned and interested parties for their consideration and adoption.

Appendix 2.—Reports of Unlawful Acts

1. To safeguard maritime interests against unlawful acts which threaten the security of passengers and crews on board ships, reports on incidents and the measures taken to prevent their recurrence should be provided to the Organization as soon as possible by the flag and port state, as appropriate. This information will be utilized in updating or revising these agreed measures, as necessary.

2. Use of the following report format is recommended for conveying information for such purposes:

REPORT ON AN UNLAWFUL ACT

Date: ———

1. Ship or Port Area Description:

Name of Ship ———

Flag ———

Master ———

Port Facility Security Officer ———

2. Brief Description of Incident or Threat

———

Date, Time and Place of Incident or Threat —

3. Number of Alleged Offenders:
Passenger ——— Crew ——— Other ———
4. Method Utilized To Introduce Dangerous Substances or Devices Into the Port Facility or Ship
Persons ———;
Baggage: ——— Cargo: ——— Ship Stores: ——— Other: ———
5. Type of Dangerous Substances or Devices Used, With Full Description:
Weapon ———
Explosives ———
Other ———
6. (a) Where Were the Items Described in Section 5 Above Concealed, if Known? ———

(b) How Were the Items Described in Section 5 Above Used and Where?

—(c) How Were the Security Measures Circumvented?

7. What Measures and Procedures are Recommended To Prevent Recurrence of a Similar Event?

8. Other Pertinent Details:

Annex 1—Security Surveys

1. General

1.1 In order to prepare security plans, an initial comprehensive security survey should be undertaken to assess the effectiveness of security measures and procedures for the prevention of unlawful acts and determine the vulnerability of the port facility or the ship, or both, to such acts.

1.2 The results of this security survey should be used to determine the security measures necessary to counter the threat both at the port facility and on board ships taking into consideration local conditions.

1.3 The level of security may vary from port to port, from ship to ship and from time to time. Liaison between security officers is important to ensure the best utilization of ship and shore resources.

1.4 The survey should determine what needs to be protected, what security measures are already in effect, and what additional security measures and procedures are required.

1.5 The security survey should be periodically reviewed and the security plans updated as necessary.

2. Port Facility Security Survey

2.1 The port facility security survey may be divided into two parts, the initial preliminary assessment and an on-scene security survey.

2.1.1 Preliminary Assessment

2.1.1.1 Prior to commencing the survey the port facility security officer should obtain current information on the assessment of threat for the locality and should be knowledgeable about the port facility and type of ships calling at the port. He should study previous reports on similar security needs and know the general layout and nature of the operations conducted.

2.1.1.2 The port facility security officer should meet with appropriate representatives of the port facility, of the operator, or of both of them, to discuss the purpose and methodology of the survey.

2.1.1.3 The port facility security officer should obtain and record the information required to conduct a vulnerability assessment, including:

.1 The general layout of the port facility and terminal including topography, building locations, etc.;

.2 Areas and structures in the vicinity of the port facility such as, fuel storage depots, bridges, locks, etc.;

.3 The degree of dependence on essential services, such as electric power, communications, etc.;

.4 Stand-by equipment to assure continuity of essential services;

.5 Locations and functions of each actual or potential access point;

.6 Numerical strength, reliability and function of staff, permanent labour and casual labour forces;

.7 The details of existing security measures and procedures, including inspection, control and monitoring procedures, identification documents, access control procedures, fencing, lighting, fire hazards, storm drains, etc.;

.8 The equipment in use for protection of passengers, crews and port facility personnel;

.9 All vehicle traffic or services which enter the port facility; and

.10 Availability of other personnel in an emergency.

2.1.2 On-scene Security Survey

2.1.2.1 The port facility security officer should examine and evaluate the methods and procedures used to control access to ships and restricted areas in the port facility, including:

.1 Inspection, control and monitoring of persons and carry-on articles;

.2 Inspection, control and monitoring of cargo, ship stores, and baggage; and

.3 Safeguarding cargo, ship stores and baggage held in storage within the port facility.

2.1.2.2 The port facility security officer should examine each identified point of access to ships and restricted areas in the port facility and evaluate its potential for use by individuals who might be engaged in unlawful acts. This includes persons having legitimate access as well as those who seek to obtain unauthorized entry.

2.1.2.3 The port facility security officer should examine and evaluate existing security measures, procedures and operations under both emergency and routine conditions, including:

.1 Established safety procedures;

.2 Restrictions or limitations on vehicle access to the port facility;

.3 Access of fire and emergency vehicles to restricted areas and availability of parking and marshalling areas;

.4 The level of supervision of personnel;

.5 The frequency and effectiveness of patrols by security personnel;

.6 The security key control system;

.7 Security communications, systems and procedures; and

.8 Security barriers and lighting.

3. Ship Security Survey

3.1 The ship security survey may be divided into two parts, the initial preliminary assessment and an on-scene security survey.

3.1.1 Preliminary Assessment

3.1.1.1 Prior to commencing the ship security survey, the operator security officer should take advantage of such information as is available to him on the assessment of threat for the ports at which the ship will call or at which passengers embark or disembark and about the port facilities and their security measures. He should study previous reports on similar security needs.

3.1.1.2 Where feasible, the operator security officer should meet with appropriate persons on the ship and in the port facilities to discuss the purpose and methodology of the survey.

3.1.1.3 The operator security officer should obtain and record the information required to conduct a vulnerability assessment, including:

.1 The general layout of the ship;

.2 The location of areas which should have restricted access, such as bridge, engine-room, radio-room etc.;

.3 The location and function of each actual or potential access point to the ship;

.4 The open deck arrangement including the height of the deck above the water;

.5 The emergency and stand-by equipment available to maintain essential services;

.6 Numerical strength, reliability and security duties of the ship's crew;

.7 Existing security and safety equipment for protection of passengers and crew; and

.8 Existing security measures and procedures in effect, including inspection, control and monitoring equipment, personnel identification documents and communication, alarm, lighting, access control and other appropriate systems.

3.1.2 On-scene Security Survey

3.1.2.1 The operator security officer should examine and evaluate the methods and procedures used to control access to ships, including:

.1 Inspection, control and monitoring of persons and carry-on articles; and

.2 Inspection, control and monitoring of cargo, ship's stores and baggage.

3.1.2.2 The operator security officer should examine each identified point of access, including open weather decks, and evaluate its potential for use by individuals who might be engaged in unlawful acts. This includes individuals having legitimate access as well as those who seek to obtain unauthorized entry.

3.1.2.3 The operator security officer should examine and evaluate existing security measures, procedures and operations, under both emergency and routine conditions, including:

.1 Established security procedures;

.2 Response procedures to fire or other emergency conditions;

.3 The level of supervision of the ship's crew, vendors, repair technicians, dock workers, etc.;

.4 The frequency and effectiveness of security patrols;

.5 The security key control system;

.6 Security communications systems and procedures; and

.7 Security doors, barriers and lighting.

4. Periodic Security Inspections

Security inspections should be undertaken on a periodic basis to permit a review and updating of the initital comprehensive security survey and possible modification of the port facility and ship security plans.

5. Report

5.1 From the information obtained during the survey assessment and inspection, the respective security officer should assess the vulnerability of the port facility, ship, or both.

5.2 The report should contain, as appropriate, recommendations for new or revised security measures and procedures.

5.3 The report will form the basis for development or revision of security plans, should be confidential and have limited distribution.

Annex 2—Security Measures and Procedures

1. General

1.1 Port facility security measures and procedures and ship security measures and procedures should take account of the recommendations contained in the report described in paragraph 5 of annex 1.

2. Port Facility Security

2.1 Security measures and procedures reduce port facility vulnerability. Increased levels of threat will have a significant influence on the number and type of security measures used and the degree of measures and procedures adopted. During short periods of heightened threat, increased security can be achieved through the use of additional manpower.

2.2 The following on-scene security measures should be considered.

.1 Restricted areas;

.2 Security barriers;

.3 Security lighting;

.4 Security alarms and communication systems; and

.5 Access control and identification.

2.2.1 Restricted Areas

The establishment of restricted areas helps control and channel access, improves security and increases efficiency by providing degrees of security compatible with the port facility's operational requirements. Restricted areas may be further subdivided depending on the degree of restriction or control required to prevent unauthorized access.

2.2.2 Security Barriers

2.2.2.1 The boundary between restricted and uncontrolled areas should be clearly defined. This can be achieved by security barriers which prevent access except at authorized points. Where permanent security barriers are appropriate, security fences have proven effective.

2.2.2.2 The purpose of security barriers is to:

.1 Delineate the area to be protected;

.2 Create a physical and psychological deterrent to persons attempting unauthorized entry;

.3 Delay intrusion, enabling operating personnel and security guards to detect, and, if necessary, apprehend intruders; and

.4 Provide designated and readily identifiable places for entry of personnel and vehicles into areas where access is restricted.

2.2.2.3 Openings in security barriers should be kept to a minimum and secured when not in use.

2.2.2.4 Security fences and other barriers should be located and constructed so as to prevent the introduction of dangerous substances or devices, and should be of sufficient height and durability to deter unauthorized passage.

2.2.2.5 Security fence lines should be kept clear of all obstructions.

2.2.2.6 The effectiveness of a security fence against penetration depends to a large extent on the construction employed. The total height of the security fencing should be not less than 2.50 metres.

2.2.2.7 Natural barriers such as water, ravines, etc., can sometimes be effectively utilized as part of the control boundary. However, they may require supporting safeguards (i.e., fencing, security patrols, surveillance, anti-intrusion devices, lighting) especially during high threat periods.

2.2.2.8 The roofs of buildings may also provide a possible route for unauthorized access to the restricted area. Safeguards should be taken to prevent such access by these routes.

2.2.2.9 Restricted areas partly surrounded by water may required security barriers with sufficient illumination during night hours and, if on navigable waters, frequent and unscheduled patrols by boat or ashore on foot, or both. Illumination of these areas must be of a type and so placed that it does not interfere with safe navigation.

2.2.3 Security Lighting

2.2.3.1 Security lighting with uninterrupted power supply is an important element in a security program.

2.2.3.2 The primary system should consist of a series of lights arranged to illuminate a specific area continously during the hours of darkness or restricted visibility. In some circumstances, it may be preferable to use such lighting systems only in response to an alarm.

2.2.3.3 Floodlights may be used to supplement the primary system and may be either portable or fixed. Floodlights when used should have sufficient flexibility to permit examination of the barrier under observation and adjacent unlighted areas.

2.2.3.4 Multiple circuits may be used to advantage in the security lighting system. Circuits should be so arranged that the failure of any one lamp will not affect a series of others.

2.2.3.5 Controls and switches for security lighting should be protected at all times.

2.2.3.6 Where fences and other barriers are to be illuminated, it is

important to ensure that the intensity of illumination is adequate for the purpose.

2.2.4 Security Alarms and Communication Systems

2.2.4.1 Intrusion detection systems and alarm devices may be appropriate as a complement to guards and patrols during periods of increased threat.

2.2.4.2 Immediate response capability by guards to an alarm from an intrusion detection system or device is important if its use is to be effective. Alarms may be local, i.e. at the site of the intrusion, provided at a central location or station, or a combination of both.

2.2.4.3 A wide variety of intrusion detection systems and devices are available for possible use. These systems include those which are sensitive to:

.1 Breaking of an electrical circuit;
.2 Interruption of a light beam;
.3 Sound;
.4 Vibration;
.5 Motion; or
.6 Capacitance change in an electrical field.

2.2.4.4 In view of the wide range of technical matters which must be taken into account in deciding upon the device or system best suited for application in each environment and for each task, it is prudent to obtain the advice of a qualified expert before a decision is made on the system or device to be used.

2.2.4.5 A means of transmitting discreet or covert signals by radio, direct-line facilities or other similarly reliable means should be provided at each access point for use by the control and monitoring personnel to contact police, security control, or an emergency operations centre in the event assistance is required. An additional public or overt communications system would be useful to obtain information on advice or routine matters.

2.2.5 Access Control and Identification

2.2.5.1 Persons and their property, before being permitted to proceed beyond access points, should be subject to routine inspection or control and monitoring, or both.

2.2.5.2 It is recommended that port facility employees, vendors, operators' personnel, assigned law enforcement officials and others, whose official duties require them to pass through the access point, should prominently display a tamper resistant identification card. This procedure should be closely monitored and strictly enforced to preserve the integrity of the inspection, control and monitoring processes and the security of the passenger terminal and ships. Approved means of identification and the procedures to be followed should be specifically provided for in the security plan.

2.2.5.3 An effective means of identification is a card which incorporates a photograph of the individual as an integral part. These should show the relevant details of the holder, e.g., name, description, or other pertinent data. The provision of a photograph is recommended in order to prevent misuse of the card by unauthorized persons.

2.2.5.4 To prevent substitution of a photograph and subsequent illegal use, the entire card should be sealed in a plastic container, preferably of a type which will mutilate the photograph and card if tampered with.

2.2.5.5 The number and types of different styles of identification cards in the port area should be limited in order to avoid control problems for security staff and the administration of the identification programme.

2.2.5.6 Identification cards should be issued by an appropriate control authority, such as a port authority or ship operator. Strict card control and accountability procedures should be established and maintained.

2.2.5.7 Persons who refuse to submit to security clearance at an access point must be denied entry.

2.2.5.8 Persons denied entry for refusal to submit to security clearance, or for other security reasons should be, if possible, identified and reported to appropriate security personnel.

2.2.5.9 A booth or other area in which a manual search can be conducted is advisable. The access points should, as appropriate, be equipped with metal detectors to expedite the security clearance of people.

2.2.5.10 All items should be subject to inspection, appropriate to the risk of unlawful acts, prior to being placed on board ships. Such inspection methods may include hand search, electronic screening, the use of dogs, or other means.

2.2.5.11 Tables on which baggage may be searched should be provided at the appropriate access points. Such tables should be high enough to permit inspection without requiring the examiner to bend. They also should be sufficiently wide to provide some measure of separation of the baggage from the passenger. The latter should be able to witness the examination, but should not be in a position to interfere with the examiner.

3. Ship Security

3.1 The master's traditional authority in matters of ship security remains unchanged. Maintaining ship security is an ongoing task. Additional security measures should be implemented to counter increased risks when warranted.

3.2 Ship security should be continually supervised by the ship security officer. A properly trained crew is in itself a strong deterrent to being subjected to unlawful acts.

3.3 Communication and co-operation with the port facility in security matters should be maintained.

3.4 The following on-board security measures should be considered:

.1 Restricted areas;
.2 Deck and overside lighting;
.3 Access control and identification; and
.4 Security alarms and communication systems.

3.4.1 Registered Areas

3.4.1.1 The establishment of restricted areas on board ships (e.g., bridge, engine-room, radio-room etc.) is recommended.

3.4.1.2 The use, number and distribution of master keys on-board ships should be controlled by the master.

3.4.1.3 The ship security plan should provide for immediate corrective action in the event of security being compromised by potential misuse or loss of keys.

3.4.2 Deck and Overside Lighting

3.4.2.1 While in port, an anchor or underway the ship's deck and overside should be illuminated in periods of darkness and restricted visibility, but not so as to interfere with the required navigation lights and safe navigation.

3.4.3 Access Control and Identification

3.4.3.1 Crew members should carry at all times a photo identification document.

3.4.3.2 When visitors to the ship are permitted their embarkation and disembarkation should be closely controlled.

3.4.3.3 All vendors should have an identification document prior to boarding the ship or should be escorted at all items on board the ship.

3.4.4 Security Alarms and Communication Systems

3.4.4.1 Security alarms and devices may be appropriate in restricted areas and at access points to the ship, as a complement to guards and patrols. Immediate appropriate response to an

alarm is important if the security alarms and devices are to be effective.

3.4.4.2 In view of the wide range of technical matters which must be taken into account in deciding upon the device or system best suited for application in each environment, it is prudent that the advice of a qualified expert be obtained before a decision is made on the system or device to be used.

3.4.4.3 A means of discreet or covert communications by radio, direct-line facilities or other reliable means should be provided in each restricted zone and at each access point for use by security or operating personnel to contact the ship security officer in the event assistance is required.

Annex 3—Security Training

1. General

A continuous and thorough training programme should support measures taken to safeguard the security of passengers and crews on board ships. Basic guidance for development of security training and education is given in the following paragraphs.

2. Criteria

Security training should meet the following criteria:

.1 Be comprehensive;

.2 Have an adequate number of qualified instructors;

.3 Have an effective system of presentation;

.4 Use adequate training equipment and aids; and

.5 Have a clearly defined objective, i.e. the attainment of an established minimum standard of proficiency, knowledge and skill to be demonstrated by each individual.

3. Port Facility Security Personnel Training

3.1 Security Officer and Appropriate Staff

The port facility security officer and appropriate port facility staff should have knowledge and, as necessary, receive training in some or all of the following, as appropriate:

.1 Security administration;

.2 Relevant international conventions, codes and recommendations;

.3 Responsibilities and functions of other involved organizations;

.4 Relevant government legislation and regulations;

.5 Risk, threat and vulnerability assessments;

.6 Security surveys and inspections;

.7 Ship security measures;

.8 Security training and education;

.9 Recognition of characteristics and behavioral patterns of persons who are likely to commit unlawful acts;

.10 Inspection, control and monitoring techniques;

.11 Techniques used to circumvent security measures;

.12 Dangerous substances and devices and how to recognize them;

.13 Ship and local port operations and conditions; and

.14 Security devices and systems.

3.2 Inspection, Control and Monitoring

Instruction and, where appropriate, training for persons assigned to conduct inspection, control and monitoring at a port facility should take into consideration, as appropriate:

.1 Responsibilities under the port facility plan or ship security plan;

.2 Inspection, control and monitoring regulations or policies and pertinent laws,

.3 Detection and identification of fire-arms, weapons and other dangerous substances and devices;

.4 Operation and testing of security equipment;

.5 Manual search methods of persons, baggage, cargo and ship's stores;

.6 Emergency procedures;

.7 Recognition of characteristics and behavioural patterns of persons who are likely to commit unlawful acts;

.8 Human relations techniques; and

.9 Techniques used to circumvent security measures.

3.3 Guards

Port facility guards who are assigned either to specific fixed locations or to patrols for the purpose of preventing unauthorized access to areas should receive a general briefing on the training subjects recommended for the port facility security officer. Initial and subsequent training shoud emphasize techniques for:

.1 Entry control;

.2 Patrols, observation and communications;

.3 Inspection, identification and reporting;

.4 Person, building and vehicle searches;

.5 Apprehension of suspects;

.6 Self-defence;

.7 Recognizing dangerous substances and devices;

.8 Human relations; and

.9 First aid.

4. Ship Security Personnel Training

4.1 Operator Security Officer and Appropriate Staff

The operator security officer and appropriate staff should have knowledge and, as necessary, receive training in some or all of the following, as appropriate:

.1 Security administration;

.2 Relevant international conventions, codes and recommendations;

.3 Responsibilities and functions of other involved organizations;

.6 Operation of technical aids to security, if used;

.7 Recognition of characteristics and behavioural patterns of persons who may be likely to commit unlawful acts;

.8 The detection and recognition of dangerous substances and devices;

.9 Port and ship operations; and

.10 Methods of physical searches of persons and their baggage.

4.3 Inspection, Control and Monitoring Personnel

Instruction and training, as appropriate, for persons assigned to conduct inspection, control and monitoring on board ships should take into consideration, as appropriate, the folowing:

.1 Responsibilities under the port facility or ship security plan;

.2 Inspection, control and monitoring regulations or policies and pertinent laws;

.3 Detection and identification of firearms, weapons and other dangerous substances and devices;

.4 Relevant government legislation and regulations;

.5 Risk, threat and vulnerability assessments;

.6 Security surveys and inspections;

.7 Ship security measures;

.8 Security training and education;

.9 Recognition of characteristics and behavioural patterns of persons who are likely to commit unlawful acts;

.10 Inspection, control and monitoring techniques;

.11 Techniques used to circumvent security measures;

.12 Dangerous substances and devices and how to recognize them;

.13 Ship and local port operations and conditions; and

.14 Security devices and systems.

4.2 Ship Security Officer

The ship security officer should have adequate knowledge of and, if necessary, training in the following, as appropriate:

.1 The ship security plan and related emergency procedures;

.2 The layout of the ship;

.3 The assessment of the risk, threat and vulnerability;

.4 Methods of conducting security inspections;

.5 Techniques used to circumvent security measures;

.4 Operation and testing of security equipment, if used;

.5 Physical search methods of persons, baggage, cargo and ship's stores;

.6 Emergency procedures;

.7 Recognition of charateristics and behavioural patterns of persons who are likely to commit uplawful acts;

.8 Human relations techniques; and

.9 Techniques used to circumvent security measures.

4.4 Ship's Crew

Crew members having specific security duties should know their responsibilities for ship security as described in the ship security plan and should have sufficient knowledge and ability to perform their assigned duties.

5. Law Enforcement Personnel

Appropriate law enforcement personnel, when not directly involved in or responsible for port facility security, should receive a general briefing to become familiar with port and ship operations and the training of port facility and ship operator security personnel. They should also be orientated regarding inspection, control and monitoring and the security plans.

Annex 4—Exchange of Information

1. The prompt and continuing dissemination and exchange of information will assist the maintenance of effective port and ship security procedures and will enable States, port facilities, operators and shipmasters to adjust their procedures in response to changing conditions and the specific or general threats.

2. Effective port and ship security requires efficient two-way communications for the exchange of information at all levels both domestic and with the governments and organizations concerned. The prompt, clear and orderly dissemination of such information is vital to the success of the security programme.

[FR Doc. 87-7919 Filed 4-8-87; 8:45 am]
BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Orange County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway widening project in Orange County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809. Telephone: (916) 551-1310.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an Environmental Impact Statement (EIS) on a proposal to widen Interstate 5 (The Santa Ana Freeway), an existing six-lane facility. The limits of the project are between State Route 22 (The Garden Grove Freeway) and State Route 91, a distance of 8.1 miles. The project is needed to relieve current congestion and to provide capacity for future traffic. This proposal is a Tier II component of a package of multi-modal transportation improvements within the Santa Ana Transportation Corridor (SATC), Orange County, California.

Alternatives being considered for the freeway widening project are:

1. Widen by two lanes using minimally acceptable design standards and a design variation with a High Occupancy Vehicle (HOV) lane.

2. Widen by two lanes plus two auxiliary lanes using desirable design standards with mixed-flow lanes exclusively and a design variation with two lanes being High Occupancy Vehicle (HOV) lanes.

3. Widen by four lanes plus two auxiliary lanes using desirable design standards with mixed-flow lanes exclusively and a design variation with two of the four lanes being High Occupancy Vehicle (HOV) lanes.

4. No Project: a "no-build" option. No physical improvements or modifications to the facility.

As an integral component of preparing the EIS, Caltrans will conduct a formal environmental scoping meeting on Wednesday, April 15, 1987 in the City of Anaheim, California, Anaheim City Council Chambers, 200 South Anaheim Blvd., Anaheim, CA 92803 at 7:30 p.m. Federal, State, and local agencies have been formally invited to participate in this meeting in order to identify significant environmental issues to be considered in the EIS. An advertisement and press release will be published in newspapers in the corridor. As the DEIS is being prepared, Caltrans will conduct informal meetings to inform the public of the status of the project.

To ensure that the full range of issues relating to these proposed alternatives are addressed and incorporated into the planning process, your comments are being solicited. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The Regulations implementing Executive Order 12371 regarding intergovernmental consultation on Federal Programs and activities apply to this program)

Issued on: April 1, 1987.

C. Glenn Clinton,

District Engineer, Sacramento, CA.

[FR Doc. 87-7849 Filed 4-8-87; 8:45 am]
BILLING CODE 4910-22-M

Federal Railroad Administration

Petitions for Exemption or Waiver of Compliance; Port Bienville Railroad et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before May 26, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Port Bienville Railroad

[Waiver Petition Docket Number RSGM–86–28]

The Port Bienville Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The locomotives are operated within a fenced and guarded industrial park in addition to approximately 8½ miles of main track located in a wooded unpopulated area along the Louisiana border near Waveland, Mississippi. The carrier indicates there have been no reported incidents of vandalism or injury due to broken glass.

Wilmington Terminal Railroad, Inc.

[Waiver Petition Docket Number RSGM–86–29]

The Wilmington Terminal Railroad, Inc. seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. The locomotives operate totally within the North Carolina ports complex which is fenced in completely and has security guards. Industries and businesses in the area have not experienced any acts of vandalism relating to broken windows. The petitioner indicates that they are a new railroad and to replace all glazing in their locomotives would create an undue financial hardship with their limited operating budget.

National Railroad Foundation and Museum

[Waiver Petition Docket Number RSGM–86–30, SA–86–9 and LI–86–5]

The National Railroad Foundation and Museum seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223), the Safety Appliance Standards (49 CFR Part 231), and the Locomotive Safety Standards (49 CFR Part 229) for one locomotive. The locomotive is not equipped with glazing that complies with 49 CFR Part 223. The locomotive design does not provide for modifications permitting installation of corner pulpit steps on the short frame (49 CFR 231.30) and is not equipped with a slip slide alarm (49 CFR 229.115). The petitioner states that the locomotive is used exclusively in slow speed tourist service. The majority of the track is located on United States Navy property and is, therefore, under the protection of Naval Security Police. The locomotive is involved in minimal swtiching and light tonnage operations over track free of significant grades. Further, the petitioner states that it does not currently have access to an inspection pit and, therefore, seeks a waiver of compliance of the 92-day locomotive inspection (49 CFR 229.23).

New Jersey Transit Rail Operations

[Waiver Petition Docket Number RSGM–86–31]

The New Jersey Transit Rail Operations (NJTRO) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for six E–8A locomotives. The petitioner indicates that due to accelerated capital maintenance programs and subsequent decrease in equipment availability coupled with an increase in ridership, these units are being activated for service on the New Jersey Coast Line. The NJTRO is requesting a temporary waiver to allow time to complete the retrofit program and continue to meet the rail service demands of the communities. The NJTRO expects to complete the retrofitting of these six locomotives with certified glazing prior to the end of March 1987.

Norfolk and Western Railway Company

[Waiver Petition Docket Number LI–87–1]

The Norfolk & Western Railway Company (N&W) seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR 229.45 and 229. 46) for 50 of its fleet of 2,670 locomotives.

The temporary waiver sought by the N&W would permit the continued use of the subject locomotives for a period of up to 3 years. Within this period of time, these locomotives would be retired from service.

A deficiency exists on these locomotives because of a unique air piping design of the independent air brake system. With this system, it is possible to have an indication of brake cylinder air pressure at the cab gauge when actually the locomotive air brakes are released. The air gauge indication is measured at a point between the air guage and the brake cylinder cutout valve rather than a point between the cutout valve and the brake cylinder.

This extension is requested because the air piping design for these locomotives was a standard arrangement used by the locomotive builders for certain locomotives built prior to 1963. The carrier states that since these locomotives have operated for several years without incident and the units are near retirement. They are hard put to spend money on a modification program.

Southern Railway Co.

[Waiver Petition Docket Number LI–87–5]

The Southern Railway (SOU) seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR 229.45 and 229. 46) for 111 of its fleet of 2,670 locomotives.

The temporary waiver sought by the SOU would permit the continued use of the subject locomotives for a period of up to 3 years. Within this period of time, these locomotives would be retired from service.

A deficiency exists on these locomotives because of a unique air piping design of the independent air brake system. With this system, it is possible to have an indication of brake cylinder air pressure at the cab gauge when actually the locomotive air brakes are released. The air gauge indication is measured at a point between the air gauge and the brake cylinder cutout valve rather than a point between the cutout value and the brake cylinder.

This extension is requested because the air piping design for these locomotives was a standard arrangement used by the locomotive builders for certain locomotives built prior to 1963. The carrier states that since these locomotives have operated for several years without incident and the units are near retirement. They are hard put to spend money on a modification program.

The Long Island Rail Road

[Waiver Petition Docket Number LI–87–2]

The Long Island Rail Road (LIRR) seeks a temporary waive of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229) for 24 of its fleet of 72 locomotives.

The temporary waiver sought by the LIRR would permit the continued use of 24 locomotives with overdue 24 month air brake work. The relief is requested for a period of 6 months. The time extension is needed because the LIRR has encountered extensive delays in delivery of replacement air brake portions. Many air brake components ordered in the spring of 1986 have not yet been received.

The delay in delivery of the air brake equipment is due to the relocation of WABCO's passenger air brake equipment division from Wilmerding, Pennsylvania, to Spartanburg, South Carolina.

Issued in Washington, DC, on April 3, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87-7861 Filed 4-8-87; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 3, 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 to the OMB, reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC. 20220.

Internal Revenue Service

OMB Number: 1545-0976
Form Number: 990-W
Type of Review: Revision
Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Trusts
Description: Form 990-W is used by tax-exempt trusts to figure estimated unrelated business income tax liability and the amount of each installment payment. Form 990-W is a worksheet only. It is not required to be filed.
Respondents: Businesses, Non-profit institutions
Estimated Burden: 7,270 hours
OMB Number: New
Form Number: 8610
Type of Review: New
Title: Annual Low-Income Housing Credit Agencies Report
Description: Form 8610 is used as a transmittal form for Forms 8609, Low-Income Housing Credit Allocation Certification. Form 8610 is completed by state and local housing credit agencies.
Respondents: State or local governments
Estimated Burden: 50 hours
OMB Number: 1545-0720
Form Number: 8038, 8038-G, 8038GC, and 8038-T
Type of Review: Revision
Title: 1. Information Return for Tax-Exempt Private Activity Bond Issues; 2. Information Return for Tax-Exempt Governmental Bond Issues; 3. Consolidated Information Return for Small Tax-Exempt Governmental Bond Issues; and 4. Arbitrage Rebate.
Description: Forms 8038, 8038-GC, and 8038-G collect the information that IRS is required to collect by Code section 149(e). IRS uses the information to complete the required study of tax-exempt bonds (requested by Congress). IRS also uses the information to assure that tax-exempt bonds are issued consistent with the rules of Internal Revenue Code sections 141 through 149. Form 8038-T is used to implement the arbitrage rebate requirement.
Respondents: State or local governments, Businesses, Non-profit institutions
Estimated Burden: 110,772 hours

Clearance Officer: Garrick Shear (202) 566-6150
Internal Revenue Service
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

U.S. Customs Service

OMB Number: 1515-0082
Form Number: CF 226
Type of Review: Extension
Title: Record of Vessel Foreign Repair or Equipment
Description: The master/commander of a vessel engaging in foreign or coastal trade, or intended to be employed in such trade, must declare at the port of first arrival from all foreign countries, any equipment, repair parts, or materials purchased for the vessel or any expenses incurred in a foreign country.
Respondents: Businesses
Estimated Burden: 4,074

Clearance Officer: B.J. Simpson (202) 566-7529
U.S. Customs Service
1301 Constitution Avenue NW.,
Washington, DC 20229
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 Officer.

[FR Doc. 87-7830 Filed 4-8-87; 8:45 am]

BILLING CODE 4810-25

Sunshine Act Meetings

Federal Register
Vol. 52, No. 68
Thursday, April 9, 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).

CIVIL RIGHTS COMMISSION

April 6, 1987.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Thursday, April 16, 1987, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Earmarks
  B. Personnel Report
  C. Activity Report
IV. Recharter of Colorado SAC
V. Unicon School Desegregation Report
VI. Briefing by Regional Directors on Plans for the Reorganized Regions

PERSON TO CONTACT FOR FURTHER INFORMATION: Thomas Olson, Press and Communications Division, (202) 376–8105.

William H. Gillers,

Solicitor.

[FR Doc. 87–8031 Filed 4–7–87; 1:29 pm]

BILLING CODE 6335-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C 552b), notice is hereby given that at 6:40 p.m. on Friday, April 3, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the request submitted by Foothill Thrift and Loan, Salt Lake City, Utah, an operating noninsured industrial bank, for waiver of a condition imposed by the Corporation in approving its application for Federal deposit insurance.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter 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 matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to 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)).

Dated: April 7, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–8016 Filed 4–7–87; 12:00 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C 552b), notice is hereby given that at 2:34 p.m. on Saturday, April 4, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the request submitted by Foothill Thrift and Loan, Salt Lake City, Utah, an operating noninsured industrial bank, for waiver of a condition imposed by the Corporation in approving its application for Federal deposit insurance.

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, the Corporation business required its consideration of the matter 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 matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to 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)).

Dated: April 7, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–8017 Filed 4–7–87; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 6, 1987.

TIME AND DATE: 10:00 a.m., Thursday, April 9, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: After the oral argument the Commissioners will also consider and act upon the following:

4. *Sec. Labor/Andy Brackner v. Jim Walter Resources,* SE 86–69–D. (Consideration of motion to reconsider dismissal of a petition for discretionary review).

It was determined by a unanimous vote of Commissioners that this item be added to the agenda and no earlier announcement of the addition was possible. 5 U.S.C. 552b(e)(1).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87–7988 Filed 4–7–87; 9:57 am]

BILLING CODE 6735-01-M

Corrections

Federal Register
Vol. 52, No. 68
Thursday, April 9, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, 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.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Additions and Deletions

Correction

In notice document 87-7049 appearing on page 10129 in the issue of Monday, March 30, 1987, make the following correction:

In the third column, the second line should read "7220-01-024-5997".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 511

[Docket No. R-87-1291, FR-2243]

Lead-Based Paint Hazard Elimination in Community Development Block Grant, Urban Development Action Grant, Secretary's Fund, Section 312 Rehabilitation Loan, Rental Rehabilitation and Urban Homesteading Programs

Correction

In rule document 87-3280 beginning on page 4870 in the issue of Tuesday, Feburary 17, 1987, make the following correction:

§ 511.11 [Corrected]

On page 4884 in the first column, in § 511.11(f)(3)(iii)(B), beginning with the fourth line, the remainder of paragraph (B) is corrected to read as follows:

"lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.".

BILLING CODE 1505-01-D

federal register

Thursday
April 9, 1987

Part II

Department of Labor

Office of the Secretary

29 CFR Part 33

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 33

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor

AGENCY: Department of Labor.

ACTION: Final rule.

SUMMARY: This regulation implements Section 504 of the Rehabilitation Act of 1973, as amended, by requiring the Department of Labor to ensure that its programs and activities do not discriminate against qualified handicapped persons. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for handicapped person and qualified handicapped person, and establishes a complaint mechanism for resolving allegations of discrimination.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Noelia Fernandez, Equal Opportunity Specialist, Directorate of Civil Rights, 200 Constitution Avenue NW., Room N-4123, Washington, DC 20210. Telephone (202) 523-9062 (VOICE) or 523-7090 (TTY).

SUPPLEMENTARY INFORMATION: On July 2, 1985, the Department of Labor published a Notice of Proposed Rulemaking (NPRM) for the enforcement of the federally conducted aspects of Section 504 of the Rehabilitation Act of 1973, as amended (50 FR 27298). The comment period for this NPRM extended through August 16, 1985. On September 10, 1985, a notice was published in the **Federal Register** reopening the comment period through October 25, 1985, in order to give more people the opportunity to submit comments to the Department (50 FR 36885).

By the close of the first comment period, the Department had received 13 letters, most of which addressed more than one section of the proposal. No comments were received during the second comment period. Five letters were from groups/associations representing handicapped individuals (two of these letters were sent of behalf of a number of organizations); five were from State or local agencies; and two were from Congressional committees. Additionally, one office within the Department requested that the meaning of one particular provision be clarified.

Most commenters addressed explicitly one or more of the specific provisions of the regulations. We respond to the specific comments in the Section-by-Section analysis. In addition, eight commenters also expressed concerns of a general nature without identifying a particular section of the regulation. These comments dealt primarily with: (1) The Department's adherence to the Justice Department's prototype regulation; (2) an alleged deviation of the proposed rule from the regulations for federally assisted programs; and (3) expansion of the initial comment period.

With respect to the comment regarding adherence to the DOJ prototype, the Department did adopt certain sections of the prototype. This action was in accordance with Executive Order 12250 which states, in pertinent part:

> Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). *To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order* and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect. (Section 1-402.) (Emphasis added.)

Based on the above mandate, the Department believes that the use of portions of the prototype regulation is appropriate. A brief discussion of item 2 is contained in the Background section below and under related topics within the Section-by-Section Analysis. The request for an expansion of the comment period was honored with the September 10, 1985, notice in the **Federal Register** which reopened the comment period for an additional 45 days.

The decisions made by the Department in response to the comments received were the result of a thorough consideration of the merits of the points of view expressed in the comments and not the number of commenters addressing any one point.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Labor. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).)

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies be submitted to the appropriate authorizing committees of Congress and that such regulations take effect no earlier than the thirtieth day after they have been so submitted. The Department of Labor is submitting this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped, and to the House Committee on Education and Labor and its Subcommittee on Select Education. The regulation will become effective on May 11, 1987.

This regulation has been reviewed by the Department of Justice (DOJ) under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298), and by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. The rule applies only to Department of Labor programs and activities and therefore does not have an impact on small entities. Accordingly, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-By-Section Analysis and Response to Comments:

In response to comments received, this final rule contains minor revisions from the rule which was proposed. However, these revisions have not materially modified the regulation. The substantive nondiscrimination obligations of the Department remain identical to those established for programs or activities receiving Federal financial assistance despite some language differences between the regulations for the two programs. (*See* 28 CFR Part 41, Section 504 coordination

regulation for federally assisted programs.)

Section 33.1 Purpose

No comments were received on this section and it is adopted as proposed.

Section 33.1 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 33.2 Application

No comments were received on this section and it is adopted as proposed.

The regulation applies to all programs or activities conducted by the Department of Labor. By this, we mean programs or activities carried out by the Department either directly or through contractors acting on its behalf. In addition to employment, federally conducted programs and activities fall into two categories: those involving general public contact as part of ongoing agency operations and those directly administered by agencies for program beneficiaries. Activities in the first category would include communication with the public (*e.g.*, telephone contacts, office walk-ins or interviews, oral or visual public information). The second category includes programs that provide Federal services or benefits (*e.g.*, coal mine workers' compensation, labor certification for alien workers).

Currently, all Department of Labor programs and activities covered by this regulation are conducted under 15 major administrative components (*i.e.*, administrations, offices, commissions, etc.).

Section 33.3 Definitions

We received comments on four definitions in this section—"Auxiliary aids," "Facility," "Handicapped person," and "Qualified handicapped person."

One commenter suggested incorporating a definition for "reasonable accommodation." Traditionally, Government regulations have not used the term "reasonable accommodation" outside of the employment context. In the context of participation and services, we have employed other terms to convey the concepts that reasonable accommodation embodies, *e.g.*, auxiliary aids, related services, academic adjustments. Since this regulations provides that all employment-related matters arising under this rule shall be governed by the regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, use of the term "reasonable accommodation" will be limited to that context. (*See* section 33.7.)

"Auxiliary aids." "Auxiliary aids" means, for purposes of this regulation, services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Department's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 33.11(a)(1), they may also be necessary to meet other requirements of the regulation. Two commenters responded to this definition, and their comments are discussed in connection with § 33.11(a)(1). This definition is unchanged from the proposal.

"Facility." The definition of "facility" is adopted as proposed. It is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted. The two commenters who addressed this definition opposed the deletion. As we stated in the proposal, the phrase "or interest in such property," has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the Department regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the Department.

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Two commenters stated that we should include examples of handicapping conditions. However, a careful reading of the proposal clearly demonstrates that the definition includes sufficient examples for guidance, and nothing would be gained by adding additional examples. Therefore, the definition is adopted as proposed.

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32). This definition is adopted as proposed.

Paragraph (a) defines "qualified handicapped person" with regard to any program under which a person is required to perform services or achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of the program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It concluded, therefore, that the school was not required by § 504 to make modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

Consistent with the Court's reasoning, under this definition, the Department is expected to make modifications in order to enable a qualified handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered or perform the required services.

Eight commenters addressed this definition. They objected to the revised definition for a variety of reasons. Three stated that the Department incorrectly used *Davis* as the justification for explaining the differences in the definition of qualified handicapped individual between the federally assisted and the federally conducted regulations. These commenters argued that the Supreme Court upheld the validity of the existing federally assisted program regulations in *Consolidated Rail Corp.* v. *Darrone*, 104 S. Ct. 1248 (1984) and in *Alexander* v. *Choate*, 105 S. Ct. 712 (1985). This reliance on the Court's actions in both *Darrone* and *Choate* is misplaced. In *Darrone*, the

Court ruled on a series of issues, the most important of which was under what circumstances section 504 applied to employment discrimination by recipients. The Court did not concern itself either directly or indirectly with the definition of "qualified handicapped person." Similarly, even though the Court in *Choate* deferred at points to the coordination regulations for federally assisted programs, it did not address any issues dealing with the definition of "qualified handicapped person." The main question addressed by the Court was whether proof of discriminatory intent is always required to establish a violation of section 504, or whether that law is also violated by conduct that has a discriminatory effect.

Five commenters urged the Department to incorporate into the definition a requirement that reasonable accommodations be considered in determinations on whether a particular individual meets the essential eligibility requirements. Even though the definition does not, by its explicit terms, include a reference to "reasonable accommodation," we recognize a direct link between qualification and accommodations. In other words, the determination of whether a person is qualified must, of necessity, include an assessment of the essential functions of the program or activity, the person's abilities, and the accommodations, if any, which might be needed. Some handicapped people will not need an accommodation in order to participate or perform, others will. Under the definition in this regulation, as long as a person meets the essential eligibility requirements and the accommodation in question does not result in a fundamental change in the nature of the program or activity, the individual will be deemed qualified.

As perceived by some commenters, under this definition of "qualified handicapped person," the individual would have an additional burden of demonstrating that participation in a program would not cause a modification that would result in a fundamental alteration of a program. This was not, however, the intent of the Department. Therefore, we have added language to the definition of "qualified handicapped person" to make it clear that the Department has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the Department must follow the procedures established in §§ 33.9(a)(2) and 33.11(e), which are discussed below.

For programs or activities that do not require a person to perform a service or achieve a level of accomplishment, paragraph (b) applies. Paragraph (b) adopts the definition in the coordination regulation applicable to persons who are participants or beneficiaries of services (28 CFR 41.32(b)). Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity. In other words, a less stringent standard applies in the absence of the obligation to perform services or achieve a certain level of accomplishment. This paragraph is adopted as proposed.

Three commenters raised questions regarding the impact of the regulation on employment practices. Nothing in this Part changes the existing regulations, including definitions, applicable to employment. However, we have added a new paragraph (c) which defines the term "qualified handicapped person" for purposes of employment. This definition appears in the EEOC's regulation at 29 CFR 1613.702(f) and has been made applicable to this Part by § 33.7.

Section 33.4 Self-evaluation

This section requires the Department to conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process mandates consultation with handicapped persons, organizations representing handicapped persons, or other interested persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). This section is adopted as proposed. Three commenters addressed this provision and supported its inclusion in the regulation.

Section 33.5 Notice

Section 33.5 requires the Department to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation, consistent with the provision at 28 CFR 41(b)(1) of the coordination regulation. However, since the methods of achieving notification are of an infinite variety, the regulation does not mandate adoption of any particular type of notice. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Department's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio. This provision is adopted as proposed. The two commenters who addressed this section supported its inclusion in the regulation, and offered suggestions about its implementation.

Section 33.6 General prohibitions against discrimination

Section 33.6 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51). It is adopted as proposed. Three commenters expressed concern that the language at 28 CFR 41.51(b)(1)(v) had not been included. We read that particular provision to prohibit *recipients* from providing significant assistance to an agency, organization or person, *i.e.*, subrecipient, that discriminates on the basis of handicap. Clearly, the provision is not applicable in the context of this rule which applies only to Department of Labor conducted programs and activities.

Paragraph (a) restates the nondiscrimination mandate of section 504. No comments were received on this provision. The remaining paragraphs in section 33.6 establish the general principles for analyzing whether any particular action of the Department violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Department violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in section 33.6. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b)(1) prohibits overt denials of equal treatment of handicapped persons. More specifically, paragraph (b)(1)(iii) requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. See also, the later sections on program accessibility (sections 33.9–33.10) and communications (section 33.11) which are specific applications of this principle. The Department may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of presumptions that absolutely exclude certain classes of disabled persons (*e.g.* epileptics, hearing-impaired persons,

persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption would be permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. For example, it would be permissible to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a driver's license; but it may not be permissible to automatically disqualify all those who are blind in just one eye. One commenter objected to the use of an irrebuttable presumption in certain instances. However, as the example demonstrates, there are some handicaps which, by their very nature, preclude individuals from performing certain activities. Accordingly, this provision is unchanged from the proposal.

Despite the mandate of paragraph (d) that the Department administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv) permits the Department to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the Department's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in a program that is not designed to accommodate handicapped persons. No comments were received on this provision.

Paragraph (b)(3) prohibits the Department from utilizing criteria or methods of administration that deny handicapped persons access to the Department's programs or activities. The phrase "criteria or methods of administration" refers to official written departmental policies and the actual practice of the Department. This paragraph prohibits both blatantly exclusionary policies or practices and non-essential policies and practices that are neutral on their face, but which deny handicapped persons an effective opportunity to participate. No comments were received on this provision.

Paragraph (b)(4) specifically applies the prohibition enunciated in section 33.6(b)(3) to the process of *selecting* sites for construction of new facilities to be used by the Department. No comments were received on this provision.

The five commenters responding to proposed paragraph (b)(5) recommended its deletion. In general, they argued that the language is ambiguous, misleading or in some instances, inconsistent with the tenets of section 504 which, according to them, require that buildings owned or leased by the Department be accessible to handicapped persons. These comments reflect a misunderstanding of both the language and the purpose of paragraph (b)(5). Paragraph (b)(5) must be read in conjunction with paragraph (b)(4) which deals only with the accessibility of a site, *i.e.*, a parcel of land, for the purpose of leasing a building of constructing new facilities for use by the Department. Paragraph (b)(4) requires the Department to consider the accessibility needs of handicapped persons before making a decision regarding the selection of a particular location. This means that the Department would have to evaluate where the parcel is located (*e.g.*, at the top of a steep incline), the availability of transportation routes, the necessity for curb ramps and other modifications to the streets, etc., to determine whether the site meets the accessibility requirements. In other words, paragraph (b)(4) articulates standards applicable to future selections of sites. Paragraph (b)(5) merely clarifies the applicability of (b)(4) by stating that it does not apply where the Department is already firmly established on a site, whether through ownership or lease arrangement, and no future move is contemplated. However, paragraph (b)(5) would not exempt the Department from ensuring that the buildings and facilities on that site meet, as applicable, the accessibility standards for new construction, additions, or alterations (*see*, the discussion below regarding section 33.9 and 33.10). Moreover, in situations where the Department is leasing a building, the prohibitions contained in the (b)(4) site selection provision would be applicable to the deliberations regarding renewal of the lease.

Paragraph (b)(7) prohibits the Department from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certifications or by establishing requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap.

This paragraph also expressly excludes the programs or activities of licensees or certified entities themselves from the scope of these regulations. Such programs or activities are not themselves federally conducted programs or activities (nor are they programs or activities receiving Federal financial assistance) merely by virtue of the Federal license or certificate. No comments were received on this provision.

Section 33.7 Employment

This provision is adopted as proposed. It requires the Department to ensure that applicants for employment and employees are not discriminated against on the basis of handicap. The three commenters who addressed this provision indicated that the rule's treatment of employment was not sufficiently comprehensive because it: (1) Does not enumerate the employment practices covered (*e.g.*, hiring, promotion, assignment); (2) does not say what must be done to avoid or correct possible discrimination (*e.g.*, reasonable accommodation, review of preemployement tests, limitations on preemployment inquiries and the use of medical examinations); and (3) does not define a "qualified handicapped person" with respect to employment.

Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra, Boyd* v. *U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985); *cf. McGuinness* v. *U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984).

Courts uniformly have held that in order to give effect to Section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, section 33.7 (Employment) of this rule adopts the definitions, regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, Subpart G. In addition to this section, § 33.12(b)(1) specifies that the Department will use the existing EEOC procedures to resolve allegations of employment discrimination.

Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the Department has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient.

Section 33.8 Program accessibility: Discrimination prohibited

No comments were received on this section and it is adopted as proposed.

Section 33.8 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 33.9 and 33.10.

Section 33.9 Program accessibility: Existing facilities

This section is adopted as proposed.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–41.58) with certain modifications. Thus, section 33.9 requires that a Department program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. However, section 33.9 makes clear that the Department is not necessarily required to make each of its existing facilities accessible (section 33.9(a)(1)) and, unlike 28 CFR 41.56–41.57, places explicit limits on the Department's obligation to ensure program accessibility (section 33.9(a)(2)).

Paragraph (a)(2) codifies recent case law that defines the scope of the Department's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Department is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in section 33.11(e). This provision provoked responses from six commenters. They were critical of the "undue financial and administrative burdens" language, favoring its deletion on the ground that no exception of this kind appears in the coordination regulations for federally assisted programs.

It is true that the "undue financial and administrative burdens" language is not found in the coordination regulations for federally assisted programs. However, since the promulgation of those regulations, the Federal courts have recognized that financial and administrative burdens are legitimate considerations in determining whether the failure to provide accommodations is discriminatory under Section 504.

As explained in the preamble to the Department's proposal, the "undue financial and administrative burdens" language is based on the Court's holding in *Davis* that Section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Moreover, since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought under Section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association (APTA)* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981).

The provision in paragraph (a)(2) is also supported by the Supreme Court's decision in *Choate, supra*, which involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. In *Choate*, plaintiffs argued that this reduction violated Section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that Section 504 reaches "some conduct" which has a disparate impact, but held that the reduction in inpatient care coverage was not the sort of disparate impact discrimination prohibited by Section 504 or its implementing regulations (*id.* at 720). Relying on *Davis*, the Court said that under Section 504 a balance must be struck between the rights of the qualified handicapped to "meaningful access to the benefits that the grantee offers" and the legitimate interests of Federal grantees in preserving the integrity of their programs (*id.* at 720–722).

Thus, *Choate* supports the position that, in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs or administrative burdens that the refusal to undertake the accommodations is not discriminatory. The *APTA* and *Dopico* decisions make clear that financial burdens can limit the obligation to comply with Section 504. *See also, New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847 (10th Cir. 1982).

Two commenters also argued that inclusion of the undue burdens provision was inconsistent with a position taken by Vice President Bush in a letter of March 21, 1983, announcing the Administration's decision not to revise the coordination regulation for federally assisted programs. The Department's decision to include the undue burdens language does not conflict with the position taken by Vice President Bush on the guidelines for federally assisted programs. In his letter, the Vice President stated that "extensive change of the existing 504 coordination regulations was not required, and that with respect to those few areas where clarification might be desirable, the courts are currently providing useful guidance and can be expected to continue to do so in the future." One element of that "useful guidance" obviously comes from interpretations of the Supreme Court's holdings in *Davis* and *Choate*.

Paragraph (a)(2), however, does not relieve the Department of all obligations to handicapped persons. Even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the Department must still take all reasonable actions to open participation in the Department's program to disabled persons to the fullest extent possible.

In our view, compliance with section 33.9(a) will not result, in most cases, in undue financial and administrative burdens on the Department. Further, the regulations incorporate, at section 33.9(b), procedures to ensure that an "undue burdens" decision is made only after taking numerous factors into consideration. Specifically, whenever a Department official believes that the proposed accommodation would result in a fundamental alteration of the program or undue burdens, paragraph (b)(1) requires the appropriate Department official to prepare a report for the Secretary of Labor. The Department official is also required to make reasonable efforts to ensure that the person(s) to be accommodated has an opportunity to provide information which would be relevant to the determination. Paragraph (b)(2) provides that the burden of proving that

compliance with section 33.9(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Department. Paragraph (b)(3) provides that the decision that compliance would result in such alteration or burdens must be made by the Secretary after considering all departmental resources available for use in the funding and operations of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. This decision would represent the final administrative decision of the Department, and, therefore, would be subject to judicial review. The commenters who addressed these procedures were very supportive of them.

Four commenters recommended that the decision that an action would result in undue burdens be based on the resources of the Department as a whole. We decline to accept this recommendation. The Department believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens because parts of the Department's budget are earmarked for specific purposes.

Paragraphs (e) and (f) establish time periods for complying with the program accessibility requirement. Consistent with the requirements contained in the coordination regulation for federally assisted programs (28 CFR 41.57(b)), the Department must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 33.10 Program accessibility: New construction and alterations.

This section is adopted as proposed. With respect to new construction, overlapping coverage exists under sections 502 and 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 33.10 provides that buildings constructed or altered by, on behalf of, or for the use of the Department shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with the "Uniform Federal Accessibility Standards" adopted by the General Services Administration pursuant to the Architectural Barriers Act (ABA), 41 CFR Part 101–19.600 to 101–19.607 (1985). It is appropriate to adopt the existing ABA standard for Section 504 compliance because new and altered buildings subject to this regulation are also subject to the ABA.

Two commenters expressed concern that buildings leased by the Department after the effective date of this regulation would not be required to meet the new construction standard, as long as the requirements of section 33.9 were met. This is not inappropriate because section 504 does not require that the Department establish an environment which is totally barrier-free. Some physical barriers may exist so long as they do not hinder the full participation of handicapped persons in each program or activity. Under the ABA, the Department must ensure that all facilities that it constructs, alters or leases meet the accessibility requirements prescribed by the General Services Administration. The Department will ensure compliance with the ABA standard.

Section 33.11 Communications.

This section is adopted as proposed. It requires the Department to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, employees, participants, and members of the public. These steps include procedures for: determining when auxiliary aids are necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the Department's program or activity (section 33.11(a)(1)); providing an opportunity for handicapped persons to request the auxiliary aids of their choice; and giving primary consideration to the expressed choice of the individual (section 33.11(a)(1)(i)). The Department shall provide such auxiliary aids at no cost to the individual unless the Department demonstrates that another effective means of communication exists or that use of the means chosen would not be required under section 33.11(e). As under section 33.9, paragraph 33.11(e) places a limit on the Department's obligation to ensure effective communication. Two commenters objected to the use of the "burden" language in paragraph (e). The Department's reasons for retaining this language have been set forth in the discussion under section 33.9(a)(2), above. The process for determining whether a proposed action would fundamentally alter the nature of a program or cause undue financial and administrative burden is also the same as that described in section 33.9(a)(2).

In general, the Department will make clear to the public: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities; (2) the opportunity to request a particular mode of communication; and (3) the Department's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective. In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision impaired persons, effective communication might be achieved by several means, including readers and audio recordings. The Department will also have to ensure effective communication with vision impaired and hearing impaired persons involved in hearings conducted by the Department by providing auxiliary aids, as appropriate, at the proceedings. If sign language interpreters are necessary, the Department may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (section 33.11(a)(1)(ii). For example, the Department need not provide wheelchairs, eye glasses, or hearing aids to applicants or participants in its programs.

One commenter suggested that section 33.11(a)(1)(ii) be modified to state that such devices are not required for "nonprogram material." This suggestion has not been adopted. In our opinion, it is less clear than the existing formulation which parallels the requirements of the Federal Government's section 504 regulations for federally assisted programs by distinguishing between communications that are necessary to obtain the benefits of Federal programs and those that are of a purely personal nature. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between patrons.

Section 33.12 Complaint handling procedures.

This section has been adopted essentially as proposed. Section 33.12(c)

was modified in response to comments that this section failed to inform the public where complaints should be filed. In general, this section describes departmental procedures for complaints alleging handicap discrimination. Complaints other than those alleging discrimination in employment will be processed in accordance with paragraphs (c) through (n). As set forth in section 33.7, paragraph (b)(1) provides that employment complaints will be processed according to procedures established in regulations of the EEOC, 29 CFR Part 1613. Paragraph (b)(2) provides that complaints based upon program inaccessibility which raise "undue burdens" or "fundamental alteration of the program" modification issues will be handled in accordance with sections 33.9(b) and 33.11(e), as applicable.

If the Department determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and attempt referal to the appropriate Government entity (section 33.12(f)). One commenter questioned the propriety of this posture and suggested that the Department should have an absolute obligation to refer the complaint to the appropriate agency. The Department thinks that it should not act as a guarantor in this process; and that the procedures it has adopted are sufficient.

Paragraph (h) is intended to encourage the process of conciliation by requiring that all parties be given the opportunity to resolve the complaint on an informal basis at any time prior to the issuance of the determination.

Paragraph (n) requires the Department to respond to requests by the Architectural and Transportation Barriers Compliance Board (ATBCB) for information on the status of complaints alleging that a building subject to the Architectural Barriers Act or section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons. One commenter questioned why the Department would wait for a request from the ATBCB, rather than requiring an automatic notification to the ATBCB of any complaint involving the Architectural Barriers Act or section 502. In 1983, the Department and the ATBCB signed a Memorandum of Agreement which stipulates that DOL would, among other things, "develop a system of tracking and resolving complaints which adheres to the standards and timetables set forth in ATBCB regulations." The provision adopts the procedure outlined in the Agreement between the Department and ATBCB.

Section 33.13 Intimidation and retaliation prohibited.

No comments were received on this section and it is adopted as proposed.

Section 33.13 prohibits the discharge, intimidation, retaliation, threat, coercion or other discrimination against a person(s) who has exercised a privilege under this regulation.

LIst of Subjects in 29 CFR Part 33

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Signed at Washington, DC, this 2nd day of April, 1987.

William E. Brock,

Secretary of Labor.

For the reasons set forth in the preamble, Title 29, Subtitle A of the Code of Federal Regulations, is amended by adding a new Part 33 as set forth below.

PART 33—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF LABOR

Sec.

Authority: 29 U.S.C. 794.

§ 33.1 Purpose.

The purpose of this Part is to effectuate Section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended Section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 33.2 Application.

This Part applies to all programs or activities conducted by the Department of Labor.

§ 33.3 Definitions.

For purposes of this Part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Assistant Secretary for Administration and Management" (ASAM) means the Assistant Secretary for Administration and Management in the Department of Labor.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Department of Labor. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. Persons with manual impairments may need other specially adapted equipment.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the actions in sufficient detail to inform the Department of the nature and date of the alleged violation of Section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Department" means the Department of Labor.

"Director" means the Director, Directorate of Civil Rights (DCR), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, or his or her designee.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"*Handicapped person*" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is

regarded as having such an impairment. As used in this definition, the phrase:

(a) "Physical or mental impairment" includes—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(b) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) "Has a record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) "Is regarded as having an impairment" means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Department as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result or the attitudes or others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this definition but is treated by the Department as having such an impairment.

"*Qualified handicapped person*" means—

(a) With respect to any program or activity of the Department under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Department can demonstrate would result in a fundamental alteration in its nature;

(b) With respect to any other Department program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity, and

(c) With respect to employment, as set forth in 29 CFR 1613.702(f), a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used:

(1) Meets the experience and/or education requirements (which may include passing a written test) of the position in question, or

(2) Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

"*Section 504*" means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this Part, Section 504 applies only to programs or activities conducted by Executive agencies and not to programs or activities which receive Federal financial assistance.

§ 33.4 Self-evaluation.

(a) The Department shall, by May 11, 1988, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this Part, and, to the extent modification of any such policies and practices is required, the Department shall proceed to make the necessary modifications.

(b) The Department shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of the interested persons consulted;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 33.5 Notice.

The Department shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this Part and its applicability to the programs or activities conducted by the Department, and make such information available to them in such manner as the ASAM finds necessary to apprise such persons of the protections against discrimination assured them by Section 504 and this regulation.

§ 33.6 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

(b)(1) The Department, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Department may not deny a qualified handicapped person the opportunity to participate in programs or activities despite the existence of permissibly separate or different programs or activities.

(3) The Department may not, directly or through contractual or other arrangements, utilize criteria or methods

of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The Department may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Department; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The provisions of paragraph (b)(4) of this section do not apply to sites or locations at which the Department owns or leases buildings on the date the regulations in this Part become effective.

(6) The Department, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(7) The Department may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the Department establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. This Part does not apply to the programs or activities of non-departmental entities that are licensed or certified by the Department of Labor.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive Order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive Order to a different class of handicapped persons is not prohibited by this Part.

(d) The Department shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 33.7 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements and procedures of Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613 (subpart G), shall apply to employment in federally conducted programs or activities.

§ 33.8 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 33.9 and 33.10 of this Part, no qualified handicapped person shall, because the Department's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Department.

§ 33.9 Program accessibility: Existing facilities.

(a) *General.* The Department shall operate such program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the Department to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(b)(1) If a Department official believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the official shall prepare a report for the Secretary of Labor which objectively considers and evaluates these issues based on the nature of the program and all departmental resources available for use in the funding and operation of the conducted program or activity. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) requesting accommodation in the particular program or activity has an opportunity to provide any relevant information. The report shall specifically address any such information. Upon completion, the report and all information before the program official shall be transmitted to the Secretary for a decision to be made in accordance with paragraph (b)(2) of this section.

(2) The Secretary shall decide, after considering the material submitted by the program official and all departmental resources available for use in the funding and operation of the conducted program or activity, whether the proposed action would fundamentally alter the program or result in undue financial and administrative burdens. A decision that compliance would result in such alteration or burdens must be accompanied by a written statement of the reasons for reaching that conclusion and shall be transmitted to the person(s) requesting accommodation. This decision represents the final administrative action of the Department.

(3) The Department has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or undue burdens.

(c) If an action would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that qualified handicapped persons receive the benefits and services of the program or activity.

(d) *Methods.* The Department may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The Department is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Alterations to existing buildings shall be made in accordance with the provisions of § 33.10 of this Part. In choosing among available methods for meeting the requirements of this section, the Department shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(e) *Time period for compliance.* The Department shall comply with the obligations established under this section within sixty days of the effective date of this Part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this Part, but in any event as expeditiously as possible.

(f) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Department shall

develop, within six months of the effective date of this Part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons and organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Department's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 33.10 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered after the effective date of this Part by, on behalf of, or for the use of the Department shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons in accordance with the requirements of the Uniform Federal Accessibility Standards adopted by the General Services Administration at 41 CFR Part 101–19.600 to 101–19.607 (1984).

§ 33.11 Communications.

(a) The Department shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Department shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Department.

(i) In determining what type of auxiliary aid is necessary, the Department shall give primary consideration to the requests of the handicapped person.

(ii) The Department need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Department communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDDs), or equally effective telecommunications systems shall be used.

(b) The Department shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Department shall provide signage at a primary entrance to each of its accessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The Department shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the Department's programs or activities. If the Department uses recruitment materials, informational publications, or other materials which it distributes or makes available to participants, beneficiaries, referral sources, applicants, employees, or the public, it shall include in those materials or publications a statement of the policy described in § 33.6 of this Part and information as to complaint procedures. The requirements of this paragraph may be met either by including applicable inserts in existing materials and publications or by revising and reprinting such materials, as appropriate.

(e) This section does not require the Department to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(1) If a Department official believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the official shall prepare a report for the Secretary of Labor which objectively considers and evaluates these issues based on the nature of the program and all departmental resources available or use in the funding and operation of the conducted program or activity. In preparing the report, the Department official shall make reasonable efforts to ensure that the person(s) requesting accommodation in the particular program or activity has an opportunity to provide any relevant information. The report shall specifically address any such information. Upon completion, the report and all information before the program official shall be transmitted to the Secretary for a decision to be made in accordance with paragraph (e)(2) of this section.

(2) The Secretary shall decide, after considering the material submitted by the program official and all departmental resources available for use in the funding and operation of the conducted program or activity, whether the proposed action would fundamentally alter the program or result in undue financial and administrative burdens. A decision that compliance would result in such alteration or burdens must be accompanied by a written statement of the reasons for reaching that conclusion and shall be transmitted to the person(s) requesting accommodation. This decision represents the final administrative action of the Department.

(3) The Department has the burden of proving that compliance with paragraphs (a) through (d) of this section, as applicable, would result in such alteration or undue burdens.

(f) If an action required to comply with this section would result in such an alteration or such burdens, the Department shall take any other action that would not result in such an alteration or such a burden but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 33.12 Complaint handling procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by DOL.

(b)(1) Complaints alleging violations of Section 504 with respect to employment shall be processed according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(2) Complaints based upon program inaccessibility in violation of section 504 will be governed by the procedures at §§ 33.9(b) and 33.11(e) of this Part, as applicable.

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Directorate of Civil Rights (DCR). Complaints may be delivered or mailed to the Director, Directorate of Civil Rights, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–4123, Washington, DC 20210.

(d) All complaints must be filed within 180 days of the alleged act of

discrimination. The Director may extend this time period for good cause.

(e) Where a complaint contains insufficient information, the Director shall seek the needed information from the complainant. If the complainant is unavailable after reasonable means have been utilized to locate him or her, or the information is not furnished within 30 days of the date of such request, the complaint may be dismissed upon notice sent to the complainant's last known address.

(f) If the Director receives a complaint over which the Department does not have jurisdiction, he or she shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(g) The Director shall accept and investigate all complete complaints which are timely filed, are within the Department's jurisdiction, and state an allegation(s) which, if true, would violate section 504 or its implementing regulations.

(1) Where the Director determines that the complaint will be investigated, he or she will notify the complainant(s) and the appropriate Department official(s).

(2) Such notification will advise the parties that a determination on the merits of the complaint will be issued within 180 days of the date of notification unless the matter is resolved informally prior to that time.

(3) If, during the course of the investigation, the Department official states that he or she believes that resolution of the complaint would require a fundamental alteration of the program or undue financial and administrative burdens, the complaint will proceed in accordance with §§ 33.9(b) and 33.11(e) of this Part, as applicable.

(h) At any time prior to the issuance of the determination the parties to the complaint may resolve the complaint on an informal basis. For this purpose, the Director shall furnish, to the extent permitted by law, a copy of the investigative file to the complainant and the appropriate Department official. If the complaint is resolved, the terms of the agreement shall be reduced to writing and entered as part of the official file by the Deputy Assistant Secretary for Administration and Management (Deputy ASAM).

(i) If informal resolution is not achieved, the Deputy ASAM shall issue a determination on the merits which notifies the parties to the complaint of the results of the investigation and includes—

(1) The findings of fact and conclusions of law;

(2) A remedy and/or corrective action, as appropriate, for each violation found; and

(3) A notice of the right to appeal to the Assistant Secretary for Administration and Management (ASAM).

(j)(1) An appeal of the Deputy ASAM's determination may be filed with the ASAM by any party to the complaint. Such appeal must be filed within 30 days of receipt of the determination. The ASAM may extend this time for good cause.

(2) Timely appeals shall be accepted and processed by the ASAM. The ASAM's determination shall be based upon the written record which may include, but is not limited to, the determination made by the Deputy ASAM, the investigative file, and any other materials submitted by the parties pursuant to a request from the ASAM.

(k) The ASAM shall notify all parties of his or her determination on the appeal within 90 days of the receipt of the appeal. The ASAM's determination represents the final administrative decision by the Department.

(l) The time limits cited in paragraphs (g)(2) and (k) of this section may be extended with the permission of the Assistant Attorney General.

(m) The Department may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

(n) The Director shall respond to requests by the Architectural and Transportation Barriers Compliance Board for information on the status of any complaint alleging that buildings that are subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), are not readily accessible and usable to handicapped persons.

§ 33.13 Intimidation and retaliation prohibited.

No person may discharge, intimidate, retaliate, threaten, coerce or otherwise discriminate against any person because such person has filed a complaint, furnished information, assisted or participated in any manner in an investigation, review, hearing or any other activity related to the administration of, or exercise of authority under, or privilege secured by Section 504 and the regulations in this Part.

[FR Doc. 87–7883 Filed 4–8–87; 8:45 am]

BILLING CODE 4510–23–M

Reader Aids

Federal Register

Vol. 52, No. 68

Thursday, April 9, 1987

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-5240
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

20 CFR

10 ... 10486
200 ... 11010
209 ... 11010
210 ... 11010
216 ... 11010
217 ... 11010
230 ... 11010
234 ... 11010
260 ... 11010
266 ... 11010
320 ... 11010
322 ... 11010
325 ... 11010
330 ... 11010
335 ... 11010
341 ... 11010
345 ... 11010
655 ... 11460
656 ... 11217

Proposed Rules:

200 ... 10384
615 ... 10774

21 CFR

5 ... 10881
81 ... 10882
172 ... 10882
175 ... 10883
184 ... 10884
193 ... 10561, 10562
510 ... 10668, 11040, 11041
520 ... 10668, 11041
522 ... 10668
524 ... 10668, 10886
529 ... 10668
558 ... 11040, 11041
561 ... 10562
573 ... 10887
1308 ... 11042

Proposed Rules:

1301 ... 11091

23 CFR

Proposed Rules:

650 ... 11092
655 ... 11502

24 CFR

511 ... 11466

Proposed Rules:

511 ... 11598
905 ... 10668
968 ... 10668

25 CFR

120 ... 11467

Proposed Rules:

40 ... 11503

26 CFR

1 ... 10368, 10741, 10742
5f ... 10368
54 ... 10563
602 ... 10368, 10563, 10742

Proposed Rules:

1 ... 10774
54 ... 10583
602 ... 10583, 10774

28 CFR

0 ... 11043
545 ... 10528

Proposed Rules:

549 ... 10531

29 CFR

33 ... 11600
2644 ... 10368

Proposed Rules:

1601 ... 11503
1625 ... 10584
1910 ... 10586

30 CFR

914 ... 10369, 10373
946 ... 11044

Proposed Rules:

723 ... 11287
724 ... 11287
733 ... 10898
845 ... 11287
846 ... 11287
910 ... 11287
912 ... 11287
921 ... 11287
922 ... 11287
933 ... 11287
937 ... 11287
939 ... 11287
941 ... 11287
942 ... 11287
947 ... 11287

31 CFR

103 ... 11436

32 CFR

154 ... 11219
701 ... 11051
706 ... 10374, 10748, 10749

33 CFR

60 ... 11506
62 ... 11506
66 ... 11506
100 ... 11506
110 ... 11512

Proposed Rules:

100 ... 10593, 10594, 10905, 10906

34 CFR

628 ... 11256

Proposed Rules:

206 ... 11448

36 CFR

1 ... 10670
2 ... 10670
4 ... 10670
7 ... 10670
34 ... 10670
228 ... 10564

Proposed Rules:

9 ... 10866

37 CFR

Proposed Rules:

307 ... 11096

38 CFR

1 ... 10888
17 ... 11259

Proposed Rules:

17 ... 10907

39 CFR

10 ... 10375
111 ... 10749

40 CFR

52 ... 10751, 11259
60 ... 10852, 11420
110 ... 10712
180 ... 10375, 10376, 10565, 10567, 11260, 11261
271 ... 10568, 11263
761 ... 10688
799 ... 10377, 10752

Proposed Rules:

52 ... 10596, 11287, 11288
141 ... 10972
142 ... 10972
143 ... 10972
180 ... 11292, 11293
261 ... 11513
300 ... 11513

41 CFR

101-20 ... 11263
101-28 ... 11275
201-32 ... 10379

42 CFR

7 ... 11072

Proposed Rules:

405 ... 11517

44 CFR

64 ... 10753

Proposed Rules:

5 ... 10385
6 ... 10385

45 CFR

Ch. II ... 11073
Ch. III ... 11073
Ch. IV ... 11073
Ch. X ... 11073
2201 ... 10870

46 CFR

401 ... 11468

Proposed Rules:

154 ... 10598
382 ... 11518
502 ... 10912

47 CFR

2 ... 10568
22 ... 10571
73 ... 10381, 10382, 10568, 10757, 11471-11473
74 ... 10568, 11474
78 ... 10568

Proposed Rules:

1 ... 11519
21 ... 11519
73 ... 11519-11521
74 ... 11519
90 ... 10389
94 ... 11519

48 CFR

7 ... 11074
215 ... 11276
217 ... 11076
252 ... 11076, 11276

Proposed Rules:

509 ... 10913

49 CFR

219 ... 10575
1003 ... 11277
1043 ... 11277
1084 ... 11277
1207 ... 10382
1249 ... 10382

Proposed Rules:

Ch. X ... 11295
571 ... 10775
1312 ... 10913
1320 ... 11295

50 CFR

17 ... 10890, 11162, 11277
301 ... 10759
611 ... 10761
642 ... 10762
652 ... 10763
663 ... 11473
672 ... 10761
675 ... 10761

Proposed Rules:

640 ... 10780
651 ... 10781

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 8, 1987