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Presidential Documents

Title 3—

The President

Proclamation 5626 of April 8, 1987

National Former POW Recognition Day, 1987

By the President of the United States of America

A Proclamation

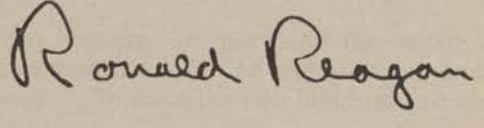
More than 80,000 Americans living today are former prisoners of war. Many of these courageous men and women were subjected for months and years to brutal and inhumane treatment by their captors, in violation of international codes and customs for the treatment of prisoners of war. Many prisoners died or were disabled; all suffered prolonged and extraordinary hardships. The members of their families also endured torment, the agony of prolonged separation or of having no word of their loved ones.

The great courage and sacrifices of American prisoners of war and their families will live in the memory of our countrymen forever. These patriots—who served and suffered and prevailed for love of our country—deserve every tribute from a Nation proud and solemnly grateful for their faith and their valor.

The Congress, by Senate Joint Resolution 47, has designated April 9, 1987, as "National Former POW Recognition Day" 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 April 9, 1987, National Former POW Recognition Day, and I urge all Americans to acknowledge the special debt we owe to our fellow citizens who underwent a great ordeal in the service of our country, and to their families. I also call upon government officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th 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. 87-8239
Filed 4-9-87; 11:10 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5627 of April 8, 1987

Small Business Week, 1987

By the President of the United States of America

A Proclamation

An essential part of our heritage as Americans is our free enterprise system. America's millions of small business men and women exemplify the freedoms we all have—the freedoms to produce and create wealth as we choose, to earn and save and invest, to make opportunities for ourselves and others. Our rights to life, liberty, and the pursuit of happiness include and presuppose these rights, and our system of limited constitutional government enshrines them and protects them equally for all. We should be extremely grateful to all entrepreneurs for reminding us in their daily lives of the blessings and importance of economic freedom.

We can also be grateful for small business men and women's tremendous contributions to our economy, our competitiveness, and our entire way of life. They create wealth. They develop new products and services, enhance existing ones, offer jobs and opportunities to millions of other Americans, and help fuel our economic expansion for the benefit of all. Their innovation, initiative, and example prompt hundreds of thousands of Americans, including young people, to join their ranks and start their own small businesses each year. In just this way, through the years, have America's communities been born, our people employed, our towns and cities grown.

The creativity, confidence, and skills of small business men and women help ensure that America will continue to grow and prosper in freedom and opportunity. That is a source of great pride to every American.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week of May 10 through May 16, 1987, as Small Business Week, and I urge all Americans to join with me in saluting our small business men and women by observing that week with appropriate activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth 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.

Ronald Reagan

[FR Doc. 87-8240
Filed 4-9-87; 11:11 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 655]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 655 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period April 10, 1987, through April 16, 1987. Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 655 (§ 907.955) is effective for the period April 10, 1987, through April 16, 1987.

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

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

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

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

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1986–87 adopted by the Navel Orange Administrative Committee. The committee met publicly on April 7, 1987, in Visalia, California, to consider the current and prospective conditions of supply and demand and recommended by a 10 to 1 vote a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for navel oranges is steady.

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

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges (navel).

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

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

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

2. Section 907.955 Navel Orange Regulation 655 is added to read as follows:

§ 907.955 Navel Orange Regulation 655.

The quantities of navel oranges grown in California and Arizona which may be handled during the period April 10, 1987, through April 16, 1987, are established as follows:

(a) *District 1:* 1,750,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons.

Dated: April 8, 1987.

Eric M. Forman,

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

[FR Doc. 87–8202 Filed 4–9–87; 8:45 am]

BILLING CODE 8410–02–M

7 CFR Part 910

[Lemon Regulation 556]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 556 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 325,000 cartons during the period April 12–18, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 556 (§ 910.856) is effective for the period April 12–18, 1987.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has

been determined to be a "non-major" rule under criteria contained therein.

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

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

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

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on April 7, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 10 to 1 vote a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is very slow.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, and Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.856 is added to read as follows:

§ 910.856 Lemon Regulation 556.

The quantity of lemons grown in California and Arizona which may be handled during the period April 12 through April 18, 1987, is established at 325,000 cartons.

Dated: April 8, 1987.

Eric M. Forman,

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

[FR Doc. 87–8201 Filed 4–9–87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 925 and 927

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 925 for the 1986–87 fiscal period. Marketing Order 927 expenses are increased for the 1986–87 fiscal period. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: December 1, 1986–November 30, 1987 (§ 925.206); July 1, 1986–June 30, 1987 (§ 927.226).

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

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601 through 674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 22 handlers of California desert grapes and 96 handlers of California-Oregon-Washington winter pears who will be subject to regulation under these marketing orders during the course of the respective season for each specified commodity. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers are believed to be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities. Each marketing order requires that the assessment rate for a particular fiscal period shall apply to all assessable commodities handled from the beginning of each period. An annual budget of expenses is prepared by each administrative committee and submitted to the Department of Agriculture for approval. The members of administrative committees are handlers and producers of the regulated commodities. This is appropriate because they are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budgets are formulated and discussed in public meetings, thus all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is a derived figure. It is merely applying a rate per unit of the commodity (e.g. per pound, ton, box, carton, etc.), to the estimated production in order to produce income sufficient to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season

starts and expenses are incurred on a continuous basis, therefore budget and assessment rate approval must be expedited in order that the committees will have funds to pay their expenses.

While this action may impose some additional costs on handlers, including small entities, the costs are in the form of uniform assessments on all handlers which do not impose a significant economic impact on the small entities involved.

Based on the foregoing, the Secretary finds that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to engage in public rulemaking procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 925

Marketing agreements and orders, Grapes (California).

7 CFR Part 927

Marketing agreements and orders, Pears (Oregon, Washington, California).

1. The authority citation for 7 CFR Parts 925 and 927 continues to read as follows:

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

2. New § 925.206 is added to read as follows (the following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

§ 925.206 Expenses and assessment rate.

Expenses of $43,300 by the California Desert Grape Administrative Committee are authorized, and an assessment rate of $0.003 per 22-pound container of grapes is established for the fiscal period ending November 30, 1987.

PART 927—BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, AND DOYENNE DU COMICE, VARIETIES OF PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

§ 927.226 [Amended]

3. Section 927.226 is amended by changing "$2,149,613" to "$2,649,613."

Dated: April 6, 1987.

William J. Doyle,

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

[FR Doc. 87–7937 Filed 4–9–87; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1434

Honey Price Support Regulations Governing 1986–1990 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Honey Price Support Regulations to provide: (1) That the Secretary of Agriculture shall make price support available to producers through loans, purchases or other operations, as determined and announced annually by the Secretary, (2) that the honey container requirements may be waived by Commodity Credit Corporation (CCC) when producers agree to redeem, under the lower repayment option provision and within a period of time determined by CCC, honey pledged as collateral for price support loans, and (3) for certain miscellaneous amendments.

DATES: *Effective Dates:* April 9, 1987. Comments must be received on or before May 11, 1987, in order to be assured of consideration.

ADDRESS: Send comments on the interim rule to Director, Cotton, Grain and Rice Price Support Division, ASCS–USDA, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this rule will be made available for public inspection in Room 3627—South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ross Ballard, Cotton, Grain and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447–4704.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1434) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35, and have been assigned OMB clearance numbers 0560–0040 and 0560–0087.

This interim rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that provisions of this interim rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this interim rule.

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

It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an environmental assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

A. Loans, Purchases, or Other Operations

Section 201 of the Agricultural Act of 1949, as amended (the "1949 Act"), was amended by section 1041 of the Food Security Act of 1985 (the "1985 Act") to provide that "[f]or each of the 1986 through 1990 crops of honey, the price of honey shall be supported through loans, purchases, or other operations" and specified: (1) The loan and purchase levels for honey for the 1986 and 1987 crop years and (2) the formula for determining the loan and purchase levels for 1988 through 1990 crops of honey.

Section 201 of the 1949 Act was also amended by section 1041 of the 1985 Act to provide that for the 1986 through 1990 crops of honey, the Secretary may permit producers to repay their price support loans at the lesser of the loan level or a level determined by the Secretary that will: (i) Minimize the number of loan forfeitures; (ii) not result in excessive total stocks of honey; (iii) reduce the costs incurred by the Federal Government in storing honey; and (iv) maintain the competitiveness of honey in domestic and export markets.

The Honey Price Support Regulations governing 1986–1990 crops of honey (the "regulations") were amended (interim rule published July 17, 1986, 51 FR 2585) to permit honey producers to repay their price support loans at a level lower than the loan level. The lower level was to be determined and publicly announced by the Secretary, or a designee on a weekly basis.

Currently, the regulations provide at 7 CFR 1434.1 that "[p]rice support will be made available through loans on and purchases of eligible honey." It has been determined that the regulations should be amended to provide for an annual determination and announcement by the Secretary as to whether price support would be made available to producers through loans, purchases or other operations.

The method by which price support is made available becomes more important in view of the authority now provided the Secretary to permit producers to repay their loans at a level lower than the support level which will: (1) Minimize the number of loan forfeitures; (2) not result in excessive stocks of honey; (3) reduce the costs incurred by the Federal Government in storing honey; and (4) maintain the competitiveness of honey in domestic and export markets.

An annual determination of the method by which price support would be made available to producers will permit the Secretary to best maintain the competitive relationship of honey in domestic and export markets after taking into consideration the cost of producing honey, supply and demand conditions, and world prices of honey.

B. Eligible Container Requirements

Currently, the regulations at 7 CFR 1434.7(c) provide specific requirements for containers in which honey must be packed in order to be eligible for price support. Since honey that is offered for price support loans or purchases may have to be stored by the producer or CCC for periods longer than is customary in commercial transactions, the container requirements protect CCC and the producer from problems which may arise due to long storage. In addition, the container requirements provide cost effective storage and handling, and honey in uniform size storage containers can be more efficiently disposed of by CCC.

Under the lower repayment option, a producer may redeem his honey in a short period of time after obtaining a price support loan. In such case, honey containers suitable for long term storage and of a uniform size are not necessary. This interim rule permits producers, who agree to redeem honey pledged as collateral, to utilize the type of containers suitable for their own purposes rather than use the type of containers required by the regulations.

Accordingly, the container requirements in the regulations (7 CFR 1434.7(c)) are amended to provide that CCC may waive the container requirements if a producer agrees to redeem, pursuant to the lower loan repayment option provision and within a period of time determined by CCC, honey pledged as collateral for a price support loan.

C. Miscellaneous Changes

1. Limitation of Waiver Authority

It has been determined that § 1434.2(c) which provides that the authority provided in the regulations to administer the honey price support program does not include authority to modify or waive any provisions of the regulations should be deleted. It is believed that this provision is not necessary because it merely recites the established law that provisions of the regulation cannot be waived except where specifically provided in the regulation. Its inclusion in the regulation may cause some confusion when specific waiver provisions are included in the regulations such as the amendment set forth above.

2. Definition of Term

It has been determined that the definition of the term "the regulations in this subpart" in § 1434.34(f) should be deleted. The term is defined as the regulations contained in this subpart together with amendment thereto and notices published in the **Federal Register**. It is believed that this provision is not necessary because it merely recites the established law that subsequent amendments and notices published in the **Federal Register** constitute part of the applicable program requirements.

Need for Immediate Action

Since it is necessary to implement the 1987 honey price support program shortly and since this interim rule amends the regulation to provide that: (1) The Secretary shall determine and announce annually whether price support would be made available through loans, purchases, or other operations and that (2) CCC may waive the honey container requirements for producers who agree to redeem their honey pursuant to the lower repayment option provision and within a period of time determined by CCC, it has been determined that it is impractical and contrary to the public interest for CCC to comply with any further rulemaking requirements with respect to this interim rule. Therefore, this interim rule shall become effective upon the date of filing with the Director, Office of the Federal Register. However, comments with respect to this interim rule are requested and should be submitted on or before May 11, 1987, in order to be assured of consideration. This interim rule will be reviewed and a final rule will be published in the **Federal Register** as soon as possible after the comment period.

List of Subjects in 7 CFR Part 1434

Honey, Loan programs—agriculture, Price support programs, Warehouse.

PART 1434—HONEY

Accordingly, the regulations at 7 CFR Part 1434 are amended to read as follows:

1. The authority citation for 7 CFR Part 1434 continues to read as follows:

Authority: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); sec. 5, 62 Stat. 1072 (15 U.S.C. 714c); secs. 201, 401, 63 Stat. 1052, 1054, as amended (7 U.S.C. 1446, 1421).

2. Section 1434.1 is amended by removing the second sentence and adding in lieu thereof the following two sentences:

§ 1434.1 General statement.

* * * Price support on eligible honey will be made available through loans, purchases, or other operations as determined and announced annually by the Secretary. Only the provisions of this regulation governing the type of price support operation announced by the Secretary for a crop year shall be applicable. * * *

§ 1434.2 [Amended]

3. Section 1434.2 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

§ 1434.7 Eligible honey.

4. Section 1434.7 is amended by adding after the second sentence of paragraph (c) introductory text, the following sentence.

* * * * *

(c) * * *

However, the container requirements provided in this paragraph (c) may be waived by CCC if a producer agrees to redeem, pursuant to the lower loan repayment provisions contained in § 1434.25(d) and within a time period specified by CCC, honey pledged by the producer for a price support loan.

* * * * *

§ 1434.34 [Amended]

5. Section 1434.34 is amended by removing paragraph (f) and redesignating paragraphs (g) and (h) as paragraphs (f) and (g), respectively.

Signed at Washington, DC on April 3, 1987.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-7940 Filed 4-9-87; 8:45 am]

BILLING CODE 3410-05-M

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7 CFR Part 1434

Honey Price Support Regulations Governing 1986-1990 Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts without change, the interim rule published in the Federal Register on July 17, 1986 (51 FR 25851). The interim rule amended the regulations at 7 CFR Part 1434 to implement the amendment to section 201(b) of the Agricultural Act of 1949 ("1949 Act") (7 U.S.C. 1446(b)) made by section 1041 of the Food Security Act of 1985 for the 1986-1990 crops of honey. The amended provisions principally relate to the Secretary of Agriculture's authority to permit honey producers to repay their price support loans at a level lower than the price support level. The interim rule also (a) defined adulterated honey and made producers who knowingly pledge adulterated or imported honey ineligible for price support benefits for 3 years, (b) established the loan period at nine months, and (c) made a minor change with respect to the loan application procedure.

EFFECTIVE DATE: April 10, 1987.

FOR FURTHER INFORMATION CONTACT: Ross D. Ballard, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447-4704.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1434) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C Chapter 35, and have been assigned OMB clearance numbers 0560-0040 and 0560-0087.

This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." It has been determined that provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

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

It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Commodity Loans and Purchases; Number 1051, as found in the Catalog of Federal Domestic Assistance.

Interim Rule

On July 17, 1986, an interim rule was published in the Federal Register at 51 FR 25851 which amended the Honey Price Support Regulations governing 1986-1990 crops. The interim rule amended the regulations (7 CFR Part 1434) to implement the amendments to section 201(b) of the 1949 Act made by section 1041 of the Food Security Act of 1985.

The interim rule included a number of changes in the regulation to permit producers to repay their price support loans at the loan level or a level which is less than the loan level as determined by the Secretary. The amended provisions also included a definition of adulterated honey and provided that producers who knowingly pledge adulterated or imported honey for price support loans will be ineligible for price support benefits for 3 years. The rule also provided that the Department will announce the loan repayment levels weekly; interest will not be assessed on loans redeemed at the lower repayment levels; and that pledged honey redeemed at the lower repayment levels shall not be eligible to be pledged as collateral for a new loan.

A comment period on the interim rule was provided through August 18, 1986. The Department received a total of six comments with respect to the interim rule. However, no comments addressed the amended provisions. Commentors addressed the loan availability period and honey container requirements currently found at 7 CFR 1434.4(a) and 1434.7(c). Since no comments were received with respect to the provisions in the interim rule, it has been determined that the interim rule should be adopted as a final rule.

All comments received are on file and available for public inspection in Room 3627-South Building, 14th and Independence Avenue, SW., Washington, DC 20013.

List of Subjects in 7 CFR Part 1434

Honey, Loan programs—Agriculture, Price support programs, Warehouse.

Final Rule

Accordingly, the interim rule published at 51 FR 25851, which amended 7 CFR Part 1434, is hereby adopted as a final rule without change.

Authority: Sec. 4, 62 Stat. 1070, as amended (15 U.S.C. 714b); sec. 5, 62 Stat. 1072 (15 U.S.C. 714c); secs. 201, 401, 63 Stat. 1052, 1054, as amended (7 U.S.C. 1446, 1421).

Signed at Washington, DC, on April 6, 1987.

Milt J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87-8075 Filed 4-9-87; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS Number: 1001-87]

Documentary Requirements; Nonimmigrations; Waivers; Admission of Certain Inadmissible Aliens; Parole

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule provides for the approval of applications pursuant to 212(c) of the Immigration and Nationality Act for certain aliens who wish to depart from the United States and later return to their unrelinquished domicile in the United States. The approval would be in effect only for the specific grounds of exclusion and/or deportation described in the application for which relief is granted. This modification is intended to reduce the paperwork burden for frequent travelers and the Service.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Margaret M. Smitherman, Senior Immigration Examiner, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3320.

SUPPLEMENTARY INFORMATION: Section 212(c) of the Immigration and Nationality Act ("the Act"), 8 U.S.C 1182, provides that aliens lawfully admitted for permanent residence who temporarily proceed abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven continuous years, may be admitted in the discretion of the Attorney General without regard to the exclusionary provisions of paragraphs (1) through (25) and paragraphs (30) and (31) of section 212(a) of the Act. As a result of administrative and judicial decisions, section 212(c) has been held not only to authorize discretionary relief from exclusion but also from deportation, as well as advance permission to return to the United States, for aliens who would otherwise be excludable pursuant to those paragraphs. In all cases, application for relief is filed on Form I-191, Application for Advance Permission to Return, filed with the Service office having jurisdiction over the alien's place of residence, the inspector at the port or entry or the immigration judge, depending on whether the alien is seeking advance permission to return before foreign travel, entry after such travel, or relief from exclusion or deportation.

Generally, 212(c) applications have been granted only for a single entry made within one year. In *Matter of Wolf*, 12 I&N Dec. 736 (BIA 1968), it was held that a 212(c) application cannot be granted for an indefinite period and must be somewhat limited in time. However, no specific time limit was set. The Service proposed to grant these applications in increments of up to five years, in order to reduce the need for repeated readjudication of 212(c) applications for travelers who frequently go abroad for business or personal reasons and must obtain Service permission prior to reentry.

The notice of proposed rulemaking was published on April 29, 1986 at 51 FR 15912 with a 60-day comment period. Only two comments were received by the Service during the period. One commenter suggested that the proposal be reconsidered and the other commenter opposed the proposal. Both were of the opinion that *Matter of Wolf*, supra, was improperly cited. They indicated that approving section 212(c) applications in increments of up to five years would be more restrictive than the current rule, because the Board of Immigration Appeals (BIA) has ruled in *Matter of Przygocki*, 17 I&N Dec. 361 (BIA 1982), that there is no conditional grant of relief under 212(c).

Matter of Przygocki held that an immigration judge did not have authority to grant section 212(c) relief subject to a condition subsequent. The judge had determined that the alien, a lawful permanent resident in deportation proceedings as a result of criminal convictions resulting from drug dependency; should be granted 212(c) relief subject to his not violating any criminal laws for five years. The judge had by further order provided that if the respondent was convicted of an offense within the five years, the application for relief was automatically revoked and the respondent would be deported. Such "conditional" orders had been common under the predecessor section of 212(c), which expressly authorized conditions. The BIA held that in the absence of statutory and regulatory sanctions for "conditional" section 212(c) waivers of inadmissibility, there was no authority for the continued use of such grants of relief.

The Service has reviewed the case law and has concluded that *Przygocki* and *Wolf* are inconsistent and that *Przygocki* overrules *Wolf*. *Matter of Smith*, 11 I&N Dec. 325 (BIA 1965), was decided after *Tibke v. INS*, 335 F.2d 42 (C.A. 2, 1964), which held that aliens who entered the United States as immigrants could apply for adjustment to lawful permanent resident status under section 245. *Smith* held that an application for 212(c) relief could be adjudicated in a deportation proceeding together with an application under section 245; the effect was to enable certain aliens, otherwise subject to deportation, to be adjusted to lawful permanent resident status rather than be deported.

Matter of Wolf, 12 I&N Dec. 736 (BIA 1968), decided after *Smith*, involved a lawful permanent resident who was excludable under section 212(a)(22) and thus ineligible for citizenship because he had applied for and been relieved from service in the Armed Forces because of alienage. As a businessman who took frequent short trips outside the United States, he had three times applied for and received advance permission under section 212(c), and then requested blanket advance permission. The BIA upheld the district director's denial of blanket permission, stating that it would in effect be a grant of an unlimited and absolute waiver of excludability under section 212(a)(22), a power which the BIA felt had not been granted to the Attorney General. However, the BIA did direct the district director to authorize reentry for a period not exceeding three years.

Since *Wolf*, the BIA has recognized that approval of a 212(c) application is full and independent deportation relief like that under section 244 (suspension of deportation), section 245 (adjustment of status), and section 249 (registry). *Matter of Silva*, 16 I&N Dec. 26 (BIA 1976), following *Francis v. INS*, 532 F.2d 268 (C.A. 2, 1976), and *Matter of Hom*, 16 I&N Dec. 112 (BIA 1977).

While *Przygocki* could be distinguished from *Wolf* on the ground that it involved a condition subsequent, this would be a distinction without a difference. The effect of the case law is to grant permanent relief from excludability with respect to the situations covered by the section 212(c) application; the alien is not adjusted and deportation is stayed permanently (absent fraud in the application or later-occurring grounds of exclusion). There is no three-year limit, nor are these cases subject to continued periodic review. It would be an abuse of discretion for the Service to deny an application it had

previously granted, based on the same facts. Such a readjudication constitutes a paperwork burden on the Service and the public which serves no purpose. In view of this, we find no logical basis for placing a time limit on the approval period of an application under section 212(c).

Accordingly the proposed regulation has been modified to eliminate the proposed five-year limit on a section 212(c) waiver.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, does not have a significant economic impact on a substantial number of small entities. This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 212

Aliens, Exclusion, Waivers of inadmissibility.

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

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 continues to read as follows:

Authority: Secs. 101, 103, 212, 214, 235, 236, 238, and 242 of the Immigration and Nationality Act, as amended (8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252, 1182b, and 1182c).

2. Section 212.3 is revised to read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

(a) *Jurisdiction.* An application for the exercise of discretion under section 212(c) of the Act shall be submitted on Form I–191, Application for Advance Permission to Return to Unrelinquished Domicile, to the district director in charge of the area in which the applicant's intended or actual place of residence in the United States is located prior to, at the time of, or at any time subsequent to the applicant's arrival in the United States. The application shall describe all grounds of excludability or deportability known to the applicant and all material facts relating to such grounds.

(b) *Validity.* An application may, in the discretion of the district director, be approved. Once granted, the approval is valid indefinitely; however, the approval covers only the specific grounds of excludability or deportability described in the application; an applicant who failed to describe any such ground(s) or material facts existing at the time of approval remains excludable or deportable therefor. If the applicant subsequently becomes excludable or deportable on other grounds, a new application must be filed with the appropriate district director.

(c) *Decision.* The applicant shall be notified of the decision and, if the application is denied, of the reason(s) for denial. No appeal shall lie from the denial.

(d) *Renewal before Immigration Judge.* The application may be renewed during proceedings before an immigration judge under sections 235, 236, and 242 of the Act and this chapter. An application for the exercise of discretion under 212(c) of the Act may be submitted to an immigration judge in the course of proceedings under sections 235, 236, and 242 of the Act and this chapter shall be adjudicated by the immigration judge in such proceedings, regardless of whether the applicant has made such application previously to the district director. When an appeal may not be taken from a decision of an immigration judge excluding the alien but the alien has applied for the exercise of discretion under section 212(c) of the Act, the alien may appeal the denial of such application to the Board of Immigration Appeals in accordance with the provisions of § 236.5(b) of this chapter.

Dated: March 23, 1987.

Richard E. Norton,

Associate Commissioner, Examinations.

[FR Doc. 87–8010 Filed 4–9–87; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 248

[INS Number: 1000–87]

Change of Nonimmigrant Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule change will implement section 312 of Pub. L. 99–603, the Immigration Reform and Control Act of 1986, to facilitate an application for a change to nonimmigrant (N) status while in the United States.

DATES: Interim rule effective November 6, 1986. Comments must be received on or before May 11, 1987.

ADDRESS: Submit written comments, in duplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cook, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–5014.

SUPPLEMENTARY INFORMATION: On November 6, 1986, President Reagan signed Pub. L. 99–603 into law. Section 312 of that law amended section 101(a)(15) of the Act to create a new nonimmigrant section (N). The rule revision will provide instructions that a change to the new (N) status from another lawful status is requested for under section 248 on Form I–506.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is impracticable and unncessary as the changes have been mandated by the passage of Pub. L. 99–603.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 248

Aliens, Eligibility, Ineligible classes, Reporting and recordkeeping requirements.

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

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

1. The authority citation for Part 248 is revised to read as follows:

Authority: Secs. 101, 214, 247, 248, 103, as amended (8 U.S.C. 1101, 1103, 1184, 1257, 1258); and Pub. L. 99–603.

2. In § 248.1, a new paragraph (e) is added to read as follows:

§ 248.1 Eligibility.

* * * * *

(e) *Change of nonimmigrant classification to that as described in section 101(a)(15)(N).* An application for change to N status shall not be denied on the grounds the applicant is an intending immigrant. Change of status shall be granted for three years not to exceed termination of eligibility under section 101(a)(15)(N) of the Act. Employment authorization pursuant to section 274(A) of the Act may be granted to an alien accorded nonimmigrant status under section 101(a)(15)(N) of the Act.

Employment authorization is automatically terminated when the alien changes status or is no longer eligible for classification under section 101(a)(15)(N) of the Act.

Dated: March 19, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-8009 Filed 4-9-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 86-071]

Importation of Certain Pork Hams

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations concerning the importation into the United States of pork and pork products. The regulations, which regulate the importation of hams in order to help prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholers, and swine vesicular disease, are amended to allow the importation, under specified conditions, of certain pork hams. It has been determined that such hams can be imported into the United States without presenting a significant risk of introducting any of the specified diseases.

EFFECTIVE DATE: April 8, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Dulin, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations), among other things, regulate the importation into the United States of pork and pork products in order to prevent the introduction into the United States of rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease.

With regard to these regulations, the Parma Ham Consortium in Italy requested that the regulations be amended to allow the importation into the United States of pork hams processed in accordance with certain procedures used by the Consortium. Prior to the effective date of this document such hams were not allowed to be imported into the United States because of foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease.

The Department considered this request and conducted research concerning the procedures used by the Parma Ham Consortium. The Department also developed provisions which were designed to allow the importation of such pork hams from countries where foot-and-mouth disease, African swine fever, hog cholera, or swine vesicular disease exists, without presenting a significant risk of introducing these diseases.

On February 18, 1986, a document was published in the **Federal Register** (51 FR 5716-5720) which proposed to amend the regulations to include the newly developed provisions. On April 29, 1986, another document was published in the **Federal Register** (51 FR 15913) extending the comment period on the proposal to May 29, 1986. One hundred and seventy eigth (178) comments were received in response to the proposal. They were from individuals, trade associations, veterinary medical groups, and businesses.

Three of the comments did not address the proposed amendments; 31 of the comments were negative; 1 comment was positive but suggested changes; and 143 comments were unequivocally positive, supporting the proposed amendments in their entirety without change. The negative comments received, and the positive comment which suggested changes, are discussed below.

Comments

Most of the negative comments received in response to the proposed regulations questioned whether the disease risk posed by hams which would be imported into the United States under the proposed regulations is acceptable and whether the proposed regulations are adequate to help ensure that foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease are not imported into the United States.

One commenter stated that the proposed regulations include no provision for identifying the individual ham. Another commenter stated that some system should be included in the regulations to require individual identification of the ham from the farm to the slaughtering facility.

No changes are made based on these comments. Fresh hams moving from the slaughtering facility to the processing establishment would be required to be accompanied by a numbered certificate issued by an authorized individual and stating that the hams has come from hogs which were not on any premises where foot-and-mouth disease, African swine fever, rinderpest, hog cholera, or swine vesicular disease existed within 60 days prior to slaughter. The regulations as proposed would also require that hams be individually identified at the slaughtering establishment with a hot iron brand or an ink seal showing the identification number of the establishment. Individual hams would also be required to be identified at the processing establishment by a button seal showing the month and year the ham entered the establishment.

The Animal and Plant Health Inspection Service (APHIS) believes that this combination of identification procedures would be adequate to ensure that individual hams are identified, and can be traced from slaughter to the farm or origin.

Nine commenters stated that the proposed regulations provide no means of determining or monitoring the age of individual hams. No changes are made in the proposed regulations based on these comments. The regulations as proposed provide a battery of controls designed to ensure that individual hams are processed the required period of time. These controls include: (1) The placement of a hot iron brand or in seal on the ham at the slaughtering establishment, showing the identification number of the slaughtering establishment; (2) the requirement that the ham be accompanied from the slaughtering facility to the processing establishment by a numbered certificate; (3) the requirement that original records identifying the ham by the date it entered the processing establishment, by the slaughtering facility from which it came, and by the number of the certificate which accompanied it from the slaughtering facility to the processing establishment, be maintained; (4) the placement of a button seal on each ham stating the month and year the ham entered the processing establishment; and (5) the hot iron branding of the ham with the identifying number of the processing establishment and the date salting of the ham began. The Animal and Plant Health Inspection Service believes that these controls taken together are adequate to identify individual hams and ensure that they have been processed for the full 400 days.

The issue of possible contamination of hams by workers in the processing establishment or by other hams entering the processing establishment was also raised by nine commenters. APHIS has carefully considered these comments and has determined that the regulations as proposed were insufficient to prevent such contamination. The regulations are therefore amended to include provisions that workers in processing establishments who work with fresh hams coming into the establishment either be prohibited, for a 24-hour period after handling such hams, from handling hams which have progressed in the aging/curing process beyond the final wash stage, or be required to shower and change into a clean set of clothing before handling hams which have progressed in the aging/curing process beyond the final wash stage. It appears that these amendments would minimize the possibility that hams already being processed could be contaminated by fresh hams or by workers handling fresh hams.

Eleven of the commenters stated that the disease risk presented by the importation of hams under the proposed regulations would be unacceptable. Several of these commenters suggested that *any* disease risk is unacceptable. No changes are made based on these comments. Meat and meat products are now imported into the United States, and have been imported into the United States for many years. The disease risk associated with the importation of pork hams under the proposed regulations appears to be equal to or less than that associated with the importation of other animal products which have been safely imported for many years without introducing exotic diseases of concern.

Nine comments addressed various related issues concerning enforcement of the proposed regulations and inspection of processing establishments. The various suggestions made by these commenters were: (1) To require that USDA inspect processing establishments at least four times per year; (2) to require that the USDA inspect processing establishments on a continuous basis; (3) to require that the USDA inspect foreign processing establishments as frequently as they inspect meat processing establishments in the United States; and (4) to conduct unannounced inspections of processing establishments.

No changes are made based on these comments. The proposed regulations state that inspections are "anticipated" to occur up to four times per year. This provision allows USDA personnel to conduct inspections as deemed necessary to ensure compliance with the regulations. Amending the proposed regulations to require a minimum number of inspections would lock personnel into an inspection routine which may not be necessary, and could preclude, because of the limited number of personnel available, conducting additional inspections at processing establishments where they are needed. Also, it does not appear that continuous inspection by USDA inspectors is necessary or feasible. In the United States, USDA inspectors continuously monitor meat processing facilities. However, these activities are conducted by the Food Safety and Inspection Service of the Department, which is charged with protecting the health of the public. Such continuous monitoring is not conducted by APHIS. Foreign establishments processing hams for importation into the United States under the proposed regulations would be required to comply with all applicable rules and regulations concerning the importation of meat and meat products into the United States, including rules and regulations promulgated by the Food Safety and Inspection Service of the Department. (See proposed 9 CFR 94.17, footnote 1, (51 FR 5717); 9 CFR Part 327). Finally the regulations as proposed already require that processing establishments allow unannounced inspections. (See proposed 9 CFR 94.17(k) (51 FR 5717).)

Some of the comments suggested that foreign inspections and certifications are not reliable. It has been USDA's experience that foreign inspections and certifications are reliable. All of the regulations governing the importation into the United States of animals or animal products depend in part upon inspections and certifications completed by foreign personnel in the country of origin of the shipment. USDA has not encountered problems with this system.

One commenter questioned USDA requirements concerning trichina in United States-produced hams and foreign-produced hams. Data from research in the United States indicate that trichinae-infected hams are safe for human consumption after salting and 35 days of dry curing. The proposed regulations required 400 days of salting and curing, which is more than sufficient to produce a trichinae-free product.

Three comments suggested that compliance with the proposed regulations would decrease over time. No changes are made based on these comments. APHIS does not anticipate that compliance will decrease over time. This has not proven to be the case in connection with other regulations concerning the importation of meat and meat products. The proposed regulations include provisions for the inspection of processing establishments and for the maintenance of various records. Continuing compliance with the regulations will be assured by unannounced inspection and testing as long as the country involved is infected with any of the diseases of concern. If inspections or testing demonstrate that an establishment is not complying with the requirements, the approval of the establishment will be withdrawn.

A group of commenters also questioned the accuracy and reliability of research conducted by the USDA which demonstrates that hams processed as set forth in the proposed regulations would be free of the viruses of foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. Six of these comments stated that the USDA research has not been published or subjected to peer review, and for those reasons cannot be relied upon.

In this particular case, USDA believes that the review of this project, both the protocol review prior to initiation of the studies, and the review of results obtained, were comparable to classical peer review of research studies. In addition, USDA results were confirmed by independent tests performed in Italy using similar swine and similar processing conditions. These tests all confirmed that foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease viruses are all inactivated in less than 400 days of processing as would be required in the proposed regulations.

One comment stated that other relevant research had been ignored by APHIS in developing the proposed regulations. As stated by the commenter, earlier research had been conducted on the survival of swine vesicular disease virus in dried pepperoni and salami sausages. That research indicated that the virus could survive for 400 days. However, the products involved in the study and the processsing and storage conditions used are not comparable to the products, processing, and storage conditions proposed in the document of February 18, 1986. The results of the earlier study are therefore not relevant to the proposed regulations.

Five comments generally questioned the reliability of the product testing, citing the variation between the United States and Italian test results on the survival times of the various viruses of concern. It is true that there were minor differences in the test results. In general,

the viruses of concern appeared to become inactivated earlier in the Italian studies than in the United States studies. APHIS believes that the differences are attributable to two related factors. First, the swine in the two tests were slaughtered differently. APHIS believes that the slaughter method used for the Italian tests, which produced more exertion on the part of the swine prior to their deaths, tended to lower the level of viruses in these animals. Second, the swine slaughtered for the United States tests were slaughtered at the height of infection and with maximum levels of virus in all tissues (peak viremia). In fact, APHIS believes that the swine used for the United States studies, which were visibly ill when they were slaughtered, were infected with a much higher level of virus than would generally occur in a natural outbreak of disease because they were artificially inoculated with strains of virus which produced especially high levels of virus. Also, animals which are visibly ill, as were the animals used in the United States tests, would probably not pass antemortem inspections and would not be processed into hams for importation under the proposed regulations into the United States. In other words, the United States tests involved a "worst case scenario." In designing the regulations, the test results, including the variations between them, were considered. The processing period required under the proposed regulations is long enough to cover a "worst case scenario." Three commenters expressed doubt that under commercial processing conditions virus survival would be the same as in laboratory tests, where conditions were carefully controlled. However, the proposed regulations require processing establishments to process their product under the same, carefully controlled conditions used for the tests. If the physical plant of the establishment is not capable of producing hams under the required conditions, or if a processing establishment fails to produce hams under the required conditions, the processing establishment would not be approved or approval would be withdrawn and hams from that establishment would not be allowed to be imported into the United States.

One commenter stated that they had reviewed the testing data released by the USDA, and that they had found the study was not complete in that it did not contain a description of the specific processing procedure used to process the hams tested. It is correct that the published article did not detail the entire processing procedure. However, the procedure used in the testing was the same as that which would be required under the proposed regulations.

One commenter questioned the proposed requirement that hams come "from a country determined by the Deputy Administrator, Veterinary Services, to have laws requiring the immediate reporting to the national veterinary services in that country of any premises found to have swine infected with foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease." The commenter pointed out that even when a country has such laws, diseases are not necessarily reported. The commenter drew attention to the fact that foot-and-mouth disease affects not only swine, but also ruminants. After careful consideration of this comment, APHIS has determined that the proposed regulations should be amended to require that hams come from a country which has laws requiring the immediate reporting of any premises found to have any animal affected with the diseases of concern, and to require that the country enforce such laws.

One commenter expressed concern about the reporting of diseases found in countries outside of the country where the hams might be processed. No changes are made based on this comment. The proposed regulations provide that the hams come from swine which have never been outside the country in which the hams are processed. This proposed requirement would preclude processors from obtaining swine from other countries. (See proposed 9 CFR 94.17(a)).

Finally, one comment was received which was in favor of the proposed regulations, but which suggested several changes. One change suggested was to require that the foot of the swine be removed before processing the ham. As stated by the commenter, this procedure was followed during USDA research. Therefore, because tissue from the foot was not tested to ensure that all viruses were killed by processing, and no data is available to demonstrate the disease risk posed by leaving the foot in place, the regulations are amended to require that the foot be removed prior to processing the ham, and

The commenter also suggested the regulations be amended to require that a button seal be required by the laws of the country of origin of the ham, and that proposed 9 CFR 94.14(n) be amended to add a requirement that certificate accompanying the ham at the time of importation into the United States be "issued by an entity which has received, from the national government, enforcement responsibility for the protection of the denomination [sic] of origin and production characteristics of the ham." No changes are made in the regulations based on these suggested changes. These changes appear to be unnecessary because if the requirements of the regulations regarding the button seal and certificate are not followed, the hams could not be imported into the United States.

Eight of the commenters addressed economic problems they believe would be raised by the proposed regulations. The commenters stated that the proposed regulations were "unfair" to U.S. pork businesses, they would contribute to the U.S. foreign trade imbalance, and that *all* foreign products should be barred from the United States. One commenter also stated that the economic effect of the proposed regulations would be greater than stated in the document of February 18, 1986. This comment, however, was contradicted by another comment which emphatically agreed with the proposal that imports under the proposed regulations would be quantitatively and economically insignificant.

No changes are made based on these comments. APHIS is authorized by statute to regulate the importation of meat and other animal products only for the purpose of preventing the importation into the United States of foreign animal diseases. APHIS does not have authority to regulate the importation of meat and other animal products for economic reasons.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579–0015.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have an effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition employment, investment, productivity, innovation, or the ability of

United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the number of pork hams that will be imported annually by small entities under the provisions will be an insignificant number compared to all pork hams imported into the United States by small entities.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule relieves restrictions. Accordingly, prompt action should be taken to delete the unnecessary restrictions. Therefore, in accordance with the provisions of 5 U.S.C. 553(d), this final rule is made effective upon signature.

Executive Order 12372

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

List of Subjects in 9 CFR Part 94

Animal diseases, imports Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, African Swine Fever, Exotic Newcastle Disease, Foot-and-Mouth Disease, Fowl, Garbage, Hog Cholera, Lethal Avian Influenza (AI), Rinderpest, Swine Vesicular Disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, Part 94, Title 9, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. A new § 94.17 is added to read as follows:

§ 94.17 Certain hams.

Notwithstanding any other provisions in this part, a ham shall not be prohibited from being imported into the United States if it meets the following conditions:

(a) The ham came from a swine that was never out of the country in which the ham was processed;

(b) The ham came from a country determined by the Deputy Administrator, Veterinary Services, to have and to enforce laws requiring the immediate reporting to the national veterinary services in that country any premises found to have any animal infected with foot-and-mouth disease, rinderpest, African Swine fever, hog cholera, or swine vesicular disease;

(c) The ham came from a swine that was not on any premises where foot-and-mouth disease, rinderpest, African swine fever, hog cholera, or swine vesicular disease exists or had existed within 60 days prior to slaughter;

(d) The ham was accompanied from the slaughtering facility to the processing establishment by a numbered certificate issued by a person authorized by the government of the country of origin stating that the provisions of paragraphs (a) and (c) of this section have been met;

(e) The ham was processed as set forth in paragraph (i) of this section in only one processing establishment;[1]

(f) The ham was processed in a processing establishment that prior to the processing of any hams in accordance with this section, was inspected by a veterinarian of Veterinary Services and determined by the Deputy Administrator, Veterinary Services, to be capable of meeting the provisions of this section for processing hams for importation into the United States;

(g) The ham was processed in a processing establishment for which the operator of the establishment has signed an agreement with Veterinary Services within 12 months prior to receipt of the hams for processing, stating that all hams processed for importation into the United States will be processed only in accordance with the provisions of this part;

(h) The ham was processed in a processing establishment where workers who handle fresh hams entering the establishment either are prohibited, for a period of 24 hours after handling such hams, from handling in the establishment hams which have progressed in the aging/curing process beyond the final wash stage, or are required to shower and put on a full, clean set of clothes before handling hams in the establishment which have progressed in the aging/curing process beyond the final wash stage.

(i) The ham was processed for a period of not less than 400 days in accordance with the following conditions: after slaughter the ham was held at a temperature of 0°–3°C. (32°–34.7°F.) for a minimum of 72 hours during which time the "aitch" bone and the foot was removed and the blood vessels at the end of the femur were massaged to remove any remaining blood; thereafter the ham was covered with an amount of salt equal to 4–6 percent of the weight of the ham, with a sufficient amount of water added to ensure that the salt had adhered to the ham; thereafter the ham was placed for 5–7 days on racks in a chamber maintained at a temperature of 0°–4°C. (32°–39.2°F.) and at a relative humidity of 70–85 percent; thereafter the ham was covered with an amount of salt equal to 4–6 percent of the weight of the ham, with a sufficient amount of water added to ensure that the salt had adhered to the ham; thereafter the ham was placed for 21 days in a chamber maintained at a temperature of 0°–4°C. (32°–39.2°F.) and at a relative humidity of 70–85 percent; thereafter the salt was brushed off the ham; thereafter the ham was placed in a chamber maintained at a temperature of 1°–6°C. (33.8°–42.8°F.) and at a relative humidity of 65–80 percent for between 52 and 72 days; thereafter the ham was brushed and rinsed with water; thereafter the ham was placed in a chamber for 5–7 days at a temperature of 15°–23°C. (59°–73.4°F.) and a relative humidity of 55–85 percent; thereafter the ham was placed for curing in a chamber maintained for a minimum of 314 days at a temperature of 15°–20°C. (59°–68°F.) and at a relative humidity of 65–80 percent at the beginning and increased by 5 percent every 2½ months until a relative humidity of 85 percent was reached; and during all of the procedures described above the ham had no contact with any meat or animal product other than pork fat that was treated to at least 76°C. (168.8°F.) that may have been placed over the ham during curing;

(j) The ham bears a hot iron brand or an ink seal (with the identifying number of the slaughtering establishment) which was placed thereon at the slaughtering establishment under the direct supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin, bears a button seal (approved by the Deputy Administrator, Veterinary Services, as being tamper-proof) on the hock that states the month

[1] As a condition of entry into the United States, pork and pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations thereunder (9 CFR Part 301 *et seq.*), including requirements that the pork or pork products be prepared only in approved establishments.

and year the ham entered the processing establishment and a hot iron brand (with the identifying number of the processing establishment and the date salting began) which were placed thereon at the processing establishment immediately prior to salting, under the supervision of a person authorized to supervise such activity by the veterinary services of the national government of the country of origin;

(k) The ham came from an establishment where a person authorized by the veterinary services of the national government of the country of origin to conduct activities under this paragraph, maintained original records (which shall be kept for a minimum of two years) identifying the ham by the date it entered the processing establishment, by the slaughtering facility from which it came, and by the number of the certificate which accompanied the ham from the slaughtering facility to the processing establishment, and where such original records are maintained under lock and key by such person, with access to such original records restricted to officials of the government of the country of origin, officials of the United States government, and such person maintaining the records;

(l) The ham came from a processing establishment which allows the unannounced entry into the establishment of Veterinary Services personnel, or other persons authorized by the Deputy Administrator, Veterinary Services, for the purpose of inspecting the establishment and records of the establishment;

(m) The ham was processed in a country which has been determined by the Deputy Administrator, Veterinary Services, to be free of rinderpest, and which has through its veterinary services submitted to the Deputy Administrator, Veterinary Services, a written statement stating that it conducts a program to authorize persons to supervise activities specified under this section;

(n) The ham came from a processing establishment that has entered into a trust fund agreement executed by the operator of the establishment or a representative of the establishment and Veterinary Services, and that pursuant to the trust fund agreement is current in paying all costs for a veterinarian of Veterinary Services to inspect the establishment (it is anticipated that such inspections will occur up to four times per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including an excess baggage provision up to 150 pounds). In accordance with the terms of the trust fund agreement, the operator of the processing establishment shall deposit with the Deputy Administrator, Veterinary Services, an amount equal to the approximate costs for a veterinarian to inspect the establishment one time, including travel, salary, subsistence, administrative overhead and other incidental expenses (including an excess baggage provision up to 150 pounds), and as funds from that amount are obligated, bills for costs incurred based on official accounting records will be issued to restore the deposit to its original level. Amounts to restore the deposit to its original level shall be paid within 14 days of receipt of such bills.

(o) The ham is accompanied at the time of importation into the United States by a certificate issued by a person authorized to issue such certificates by the veterinary services of the national government of the country of origin, stating that the ham was processed for at least 400 days and that all of the provisions of this section (9 CFR 94.17) have been complied with.

Done at Washington, DC, this 8th day of April, 1987.

Claude J. Nelson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 87-8132 Filed 4-8-87; 12:03 pm]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 311

[Docket No. 70220-7020]

Civil Rights Requirements on EDA Assisted Projects; Age Discrimination

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Economic Development Administration's (EDA) Civil Rights regulations to include recent final rules promulgated by the Department of Commerce (DOC) at 15 CFR Part 20 ("DOC rule"). The DOC rule establishes procedures to implement the Age Discrimination Act (The Act) of 1975, as amended. The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. EDA needs to amend its regulations to assure conformity to the DOC rule.

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: David Lasky, Chief of Civil Rights Branch, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7327, Washington, DC 20230, (202) 377-5575.

SUPPLEMENTARY INFORMATION: EDA is amending its Civil Rights requirements at 13 CFR Part 311 to include recent DOC regulations. The DOC regulations were published on August 13, 1986, in the **Federal Register** (FR) (51 FR 28925) and became effective on September 12, 1986. The Supplementary Information provided in 51 FR 28925 is appropriate for this EDA final rule. The Supplementary Information for the DOC regulation discusses the history, background, scope and coverage of the rule.

Because this rule relates to grants, benefits and contracts, it is exempt from all requirements of section 553 of the Administrative Procedure Act (APA) (51 U.S.C. 553) including Notice and opportunity to comment and delayed effective date.

No other law requires that Notice and opportunity for comment be given for this rule.

Since Notice and opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not 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.

Under section 3518(c) of the Paperwork Reduction Act of 1980 and 5

CFR 1320.3(c), the information contained in this regulation is not subject to the Office of Management and Budget review and approval.

List of Subjects in 13 CFR Part 311

Civil rights, Aged, Grants administration.

For the reasons set out in the preamble, Title 13, Chapter III, Part 311 is amended as set forth below.

PART 311—CIVIL RIGHTS REQUIREMENTS ON EDA ASSISTED PROJECTS

1. The authority citation for Part 311 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); sec. 1–105, Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended); Age Discrimination Act of 1975, as amended, 42 U.S.C. sec. 6101 *et seq.* and the government wide regulations implementing the Act, 45 CFR Part 90.

2. Section 311.1 is amended by adding paragraph (a)(5) and by revising paragraph (c) as follows:

§ 311.1 Introduction.

(a) * * *

(5) The Department of Commerce (DOC) has promulgated a regulation prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance. This regulation, published at 15 CFR Part 20 (51 FR 28925, August 13, 1986) applies to EDA applicants and recipients.

* * * * *

(c) Failure to comply with provisions described in this part, will result in enforcement in accordance with DOC regulations at 15 CFR Parts 8, 8b, 20, or will result in other sanctions and legal actions, as appropriate.

* * * * *

3. Section 311.3 is amended by revising paragraph (d) as follows:

§ 311.3 Requirements for applicants, grantees, borrowers, and "other parties".

* * * * *

(d) Applicants for and recipients of EDA financial assistance shall meet all the requirements set forth in 15 CFR Part 8b, Subparts A, B, C, and E and in 15 CFR Part 20.

Dated: December 1, 1986.

Orson G. Swindle III,

Assistant Secretary for Economic Development.

[FR Doc. 87–7972 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 018CE, Special Conditions No. 23–ACE–18]

Special Conditions; Petersen Aviation, Inc., Modified Beech Model 33 Series, Model 35 Series, and Model 36 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for Beech Aircraft Corporation Model 33 Series, Model 35 Series, and Model 36 Series airplanes that are modified to incorporate anti-detonation injection (ADI) system provisions. The certification basis for the existing type design of these airplanes does not contain adequate or appropriate safety standards for these systems. These special conditions contain the additional safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Oscar Ball, Aerospace Engineer, Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION

Background

On March 25, 1986, Petersen Aviation, Inc., Route 1, Box 18, Minden, Nebraska 68959, submitted an application for supplemental type certificate (STC) approval of the design changes necessary to incorporate an ADI system on the Beech Model 33 Series, Model 35 Series, and Model 36 Series airplanes. This installation incorporates ADI tanks, pumps, lines, and associated control systems to supply ADI fluid to the engines in measured quantities to allow the engine to be operated on automobile gasoline (autogas). The engine will be previously certificated for use of autogas with ADI independently of the airplane installation certification. Petersen Aviation, Inc., has indicated to the FAA that they plan substantially equivalent modifications to several other makes and models of small airplanes.

The installation of ADI systems in small airplanes for this purpose was not envisioned when the applicable airworthiness standards were promulgated. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for these ADI systems; therefore, an ADI system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

While developing these special conditions, the FAA determined that the ADI fluid (a mixture of 60 percent methanol and 40 percent water) is a flammable liquid in the same volatility class as gasoline and, as such, must be handled and protected in the same manner. Therefore, these special conditions require the ADI fluid systems to meet essentially the same standards as the airplane fuel system. Similar special conditions were published in the **Federal Register** on August 25, 1986 (51 FR 30206/30207).

Type Certification Basis

The certification basis for the Beech Aircraft Corporation Model 33 Series, Model 35 Series, and Model 36 Series airplanes (TC 3A15) is Part 3 of the Civil Air Regulations, as amended to May 15, 1956, and Amendment 3–8; in addition, for the Models A36TC and B36TC only, §§ 23.909, 23.1043, 23.1527(b), and 23.1583(a), as amended by Amendment 23–7 and §§ 23.959, 23.967(a)(5), and 23.1121(b) as amended by Amendment 23–18 of the Federal Aviation Regulations, Part 23, dated February 1, 1965; and for the Model B36TC only, § 23.1545(a) as amended by Amendment 23–23 of the Federal Aviation Regulations Part 23, dated February 1, 1965.

Part 36 through Amendment 36–10 of the Federal Aviation Regulations is applicable to the following Model/Serial Numbers, F33A (S/N CE–891 and after), V35B (S/N D–10313 and after), F33C (S/N CJ–156 and after), A36 (S/N E–1609 and after), A36TC (S/N EA–1 through EA–241 and EA–243 through EA–272), B36TC (S/N EA–242, EA–273 and after).

Applicable equivalent safety findings are as follows: CAR 3.664 and CAR 3.757

for Model V35B (S/N D–9948 and after), A36 (S/N E–927 and after), F33A (S/N CE–674 and after), F33C (S/N CJ–129 and after), A36TC (all serials); CAR 3.387 for Model V35B (all serials), A36 (all serials), F33A (all serials), F33C (all serials), A36TC (all serials), B36TC (all serials).

For all models, these special conditions are applicable when ADI systems are installed.

Discussion of Comments

Two commenters responded to Notice No. 23–ACE–18, published in the **Federal Register** on August 21, 1986. The closing date for comments was September 22, 1986.

One commenter, representing the general aviation manufacturers, in commenting on the several ADI special condition proposals, stated that the general aviation community, in general, has no experience with the use of anti-detonant injection systems. However, such systems were used extensively by the military services and large commercial operators from about 1940 through 1960. In spite of obvious performance dividends, commercial operators spared no efforts to delete or limit the use of ADI systems and a review of that experience is considered indispensible for the formulation of new rules.

The FAA agrees that the general aviation experience level with ADI systems is very low. However, commercial operators discontinued using ADI systems because of the limitation on the system's use and the complexity/maintenance problems with the ADI systems used on large reciprocating engines. On transport airplanes, ADI was used for power augmentation. Its operating regime was such that an ADI system failure, or even a temporary malfunction, on an engine being operated at ADI-augmented power could cause engine damage requiring shutdown, if not complete engine failure. In contrast, these ADI systems are not for power augmentation, but for detonation suppression.

The commenter states that a brief review of technical literature indicates that the following factors appear to be the most significant and need evaluation:

1. Water-methanol provides better performance to either water alone or water ethanol.

The FAA agrees that water-methanol provides better performance and notes that water-methanol is the ADI fluid planned for this system. However, for this purpose, the "better performance" relates only to detonation suppression and not with any actual increase in power.

2. The injected fluid must suppress detonation throughout the intended flight envelope.

The FAA agrees that detonation should be suppressed any time it occurs. This ADI system is designed to operate automatically during those times when the engine is producing 75 percent or more of its rated takeoff power or when the head temperature exceeds 400 °F. Cruise at less than 75 percent power or a head temperature of less than 400 °F does not require ADI detonation suppression. At cruise power, detonation from excessive leaning of mixture or from overheating of the cylinders may be suppressed in the normal manner; i.e., enriching the mixture; however, the automatic feature of the ADI system will turn on ADI fluid any time the head temperature exceeds 400 °F.

3. The fluid must begin flowing before power is increased to the augmented rating.

The FAA disagrees with the commenters imposition of a strict interpretation of previous practices on ADI systems. This ADI system is designed for detonation suppression only and not augmentation. It is not critical to engine operation that the ADI fluid must be flowing before power is increased.

4. The engine power must be reduced immediately (automatically) should the fluid supply be interrupted or exhausted.

The FAA disagrees for the same reasons as stated in No. 3 above.

5. The system must prevent operation of the engine at ratings in excess of those normally limited by detonation unless the fluid is flowing.

The FAA does not agree that the engine must be prevented from operating above 75 percent of takeoff power level without ADI. The FAA has reviewed the conditions that the engine would experience while operating above 75 percent of takoff power without ADI and has concluded that for the limited period for which these conditions may occur, appropriate engine inspections have been published in the airframe flight manual to assure continued safe engine operation.

The commenter further states that the following additional considerations need to be addressed:

1. Due to the performance differences in the anti-detonation mixture combinations available, some means must be available to identify the ADI fluid content.

The FAA agrees and will require the applicant to supply adequate instructions on the formulation, handling, and identity of the ADI fluid. Again, performance considerations are to be taken in the context of detonation suppression only to maintain the usable power level. This ADI system is not to be used in the context of an increased power level as is the case of ADI-augmented power.

2. Review of recent misfueling accidents indicates that some protection should be provided to avoid the wrong fluid being put into the ADI system.

The FAA agrees that precautions should be taken to avoid the wrong fluid being put into the ADI fluid tank, but does not agree with the comparison. The engines used in these installations can and will operate on autogas without the ADI system.

3. The deletion of slosh and vibration tests, which would have been required in § 23.965(b), is not justified.

The FAA does not agree. Section 23.965(b) states, in part: "Each fuel tank with large, unsupported, or unstiffened flat areas must . . ." meet certain slosh and vibration tests. The ADI fluid tank surfaces, as proposed, do not fit the definition of large, unsupported, or unstiffened flat areas.

4. It is presumptuous to delete § 23.975(a)(4) (interconnected tank vent requirement).

The FAA deleted the requirement because the ADI system under consideration, as proposed, incorporates one tank per system. If multiple tanks are proposed, the requirements of § 23.975(a)(4) will be imposed.

5. It does not appear appropriate to delete § 23.1141(e) on the basis of turbine engine applicability. Indeed, satisfaction of prior experience clearly indicates that this requirement should be imposed.

The FAA has further considered this issue and concluded that the commenter is correct. Section 23.1141(e) has been added to the special conditions but the lead-in phrase, "for turbine-engine-powered airplanes," has been cited as being nonapplicable.

6. No mention is made of the maintenance involved. Current time between overhauls (TBO) for small engines ranges upward to 2,000 hours and beyond. The 150-hour endurance test per § 33.49 will not ensure that the service life of the engine will not be adversely affected, particularly in view of the excessive corrosion that ADI fluid caused during its military and airline use. Thus, extreme caution is needed in pushing TBOs beyond 150 hours at this stage of development. Hidden in this is the unknown effect on engine parts that could be subject to shrinkage or expansion from alcohol. The airplane

Pilot's Operating Handbook (POH) should include such limitations and cautions as are found necessary to ensure safe operation of the airplane considering the effects of ADI on the engine.

The FAA agrees that such limitations and cautions that are found necessary to assure safe operation should be furnished to the airplane owner/operator by whatever means are appropriate to the certification basis of the airplane; i.e., POH, placards, etc. Time between overhauls (TBO) beyond the 150-hour requirement for certification are not an FAA requirement. Overhaul periods are actually based on engine condition, as monitored through periodic inspections. The periodic maintenance schedule is unchanged.

7. Section 4b.420(f), which required that there be adequate ADI tank capacity, and 4b.420–1 policy, which detailed the matter, should be considered.

The FAA does not agree. The cited CAR 4b sections apply to ADI augmented power and are not appropriate here. The times derived from the referenced sections would be only a few minutes; the proposed system is designed to suppress detonation 30 minutes or more.

8. Section 4b.471(c), which required automatic control of fluid flow and a separate control for the pump, should be considered.

The FAA disagrees; automatic control may be furnished but is not required. A separate control for the pump is part of the system.

9. Adequate service testing should be required, prior to STC approval, to ensure that airplane reliability is not degraded.

The FAA agrees and will require testing prior to approval to assure that the system does not cause an unsafe condition on the airplane.

10. A failure and effects analysis covering the added system including effect on existing systems should be required.

The FAA encourages failure modes and effects analysis (FMEA) and applicants frequently conduct an FMEA to show compliance to the rules; however, the FAA does not mandate this method for other Part 23 systems at this time and does not agree that it should be required of the ADI system.

11. The safety aspects of the additional fuel management responsibilities for the pilot in servicing and operating the airplane should be considered.

The FAA agrees and will evaluate the added workload in managing and operating the system; the current airworthiness standards require the FAA to do this. This is not a special conditions issue.

The commenter asked the following questions:

1. How will the use of autogas and ADI fluid affect engine power and airplane performance?

The FAA stated in the notice that the engine will have been type certificated for autogas and ADI prior to airplane STC. The technical data leading to FAA approval of the engine showed no degradation of power.

2. What testing will the FAA require to ensure POH performance is not degraded?

The FAA will assure that all requirements for minimum performance are maintained.

3. The Notice of Proposed Rulemaking (NPRM) is not clear as to which specific models are to be modified. Several different engines have been used in the "Model 33 Series, 35 Series, 36 Series, 95 Series and 55 Series." Is Petersen planning to modify turbo-charged engines? High altitude operation of these engines on autogas could present special problems.

The FAA received an application for, and these proposed special conditions apply to, all Beech Models on TC 3A15 with normally aspirated engines that have been approved for autogas and ADI. The FAA has received no applications for adding ADI on turbocharged engines and, at this time, there are not turbocharged engines approved for autogas.

4. The NPRM lists § 23.977(a)(2). Shouldn't this be § 23.977(a)(1)?

The FAA agrees; the typographical error has been corrected.

Another commenter, representing an aviation foundation, ". . . takes issue with the FAA's determination that the anti-detonation injection (ADI) fluid is a flammable liquid in the same volatility class as gasoline. While the Petersen Aviation, Inc. ADI fluid might be a flammable liquid, other ADI liquids are not. ADI fluid is normally a mixture of water and alcohol. Alcohol is added to water to prevent freezing at low ambient temperature conditions. The concentration of alcohol required to effectively lower the freezing temperature is insufficient to support a flame.

Anti-detonation injection (ADI) is a generic term covering different combinations and types of alcohol and water. All ADI fluids are not flammable and some change in the terminology must be incorporated to exclude nonflammable ADI fluids from having to be specially handled and protected as gasoline."

The FAA recognizes that ADI systems have been used in both reciprocating and turbine engines for many years. In these systems, the ADI mixture ratio of alcohol to water was lower and flammability was less. The ADI fluid to be used in the Petersen installation is 60 percent methanol and 40 percent water. According to Perry's *Chemical Engineer's Handbook*, Sixth Edition, McGraw Hill, 1984, page 12–14, methanol water mixtures are classed as a highly flammable fire hazard with a flash point of 75 °F for a 30 percent solution of methanol in water.

The FAA agrees that ADI is a generic term. However, unless and until Petersen adopts a descriptor or a trade name for this system, the FAA will refer to it as an ADI flammable fluid system, as distinguished from a nonflammable fluid system. The FAA does not plan a change in terminology at this time.

Conclusion

This action affects only the Beech Model 33 Series, Model 35 Series, and Model 36 Series airplanes incorporating ADI systems and engines certificated for use with those ADI systems. It is not a rule of general applicability and applies only to the models and series of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

In consideration of the foregoing, the following special conditions are issued as a part of the type certification basis for the Beech Model 33 Series, Model 35 Series, and Model 36 Series airplanes modified to incorporate the Petersen Aviation, Inc., Anti-Detonation Injection (ADI) System as follows:

1. Each Anti-Detonation Injection (ADI) system must meet the applicable requirements for the design of a fuel system as specified in § 23.951(a) and (b); § 23.953, § 23.954, § 23.955(a) and (c)(1); § 23.959; § 23.961; § 23.963(a), (d), and (e); § 23.965(a)(1); § 23.967(a) (1) and (2), (b), (c), (d), and (e); § 23.969; § 23.971; § 23.963(a), (b),

and (c); § 23.975(a) (1), (2), (3), (5), (6), and (7); § 23.977(a) (1), (b), (c), and (d); § 23.991; § 23.993; § 23.994; § 23.995; § 23.997; § 23.999; § 23.1141, § 23.1143(a), (e), and (f); § 23.1189(a) and (c); and § 23.1337(a), (b)(1), (2), (3), and (4), and (c) of Part 23 of the Federal Aviation Regulations, dated February 1, 1965, as amended through Amendment 23–30, except as set forth in Special Conditions 2 through 4.

2. For ADI systems, replace the word "fuel" with the words "ADI fluid" in all Part 23 sections listed in section 1 of these special conditions, as appropriate. In addition, certain Part 23 requirements listed in Special Condition No. 1 are reworded for ADI systems, as follows:

(a) In § 23.955(a), General. In the first sentence, replace, "The ability of the fuel system to provide fuel at the rates specified in this section and at a pressure sufficient for proper carburetor operation must be shown . . ." with "The ability of the ADI system to provide ADI fluid at a flow rate and pressure sufficient for proper engine operation must be shown . . ."

(b) In § 23.955, replace the entire paragraph (c)(1) with "This flow rate is required for each primary pump and each alternate pump, when each pump is supplied with normal voltage."

(c) In § 23.967(d), the first sentence is not applicable to ADI systems. In the second sentence, the phrase, "of a single engine airplane" is not applicable to ADI systems.

(d) In § 23.971, replace paragraph (a) with "(a) Each ADI fluid tank must be drainable in the normal ground attitude". Replace paragraph (b) with "(b) Each drain required by paragraph (a) of this section must comply with the provisions of § 23.999(b)."

(e) In § 23.991, replace paragraph (a) with "(a) Primary pumps. (1) The pump which supplies ADI fluid to an engine during normal (nonfailure) operation of the system is a primary pump and there must be one primary pump for each engine. (2) It must be possible to bypass or flow ADI fluid through each primary pump." Replace paragraph (b) with "(b) Alternate provisions to permit continued supply of ADI fluid to the engine in the event of primary pump failure must be incorporated in the installation. Any pump used for that purpose will be an alternate pump for that engine. In paragraph (c), replace the word "normal" with the word "primary" and the word "emergency" with the word "alternate".

(f) In § 23.997, replace paragraph (d) with "(d) Have the capacity (with respect to operating limitations established for the ADI system) to ensure that ADI system functioning is not impaired, with the ADI fluid contaminated to a degree (with respect to particle size and density) that is greater than that established for proper operation of the ADI system," and add a new paragraph for ADI systems to read, "(e) Be located with respect to any pressure or flow sensing device such that the blockage of the filter will be detected by this device."

(g) In § 23.999, paragraph (b)(1) is not applicable to ADI systems.

(h) In § 23.1141(a), paragraphs (d) and (e) of § 23.777 which are incorporated by reference are not applicable to ADI systems.

(i) In § 23.1141(a), paragraph (e)(1) of § 23.1555 which is incorporated by reference, is not applicable to ADI systems.

(j) In § 23.1141(e), the phrase "for turbine-engine-powered airplanes" is not applicable to ADI systems.

(k) In § 23.1143, as applies to the control and shutoff of the ADI system, add, "In addition, there must be an indicator or warning light that indicates the proper operation or malfunction of the ADI system."

3. If the ADI fluid is injected into the induction air ducts, it must be injected in a location where the discharge, distribution, or atomization of the fluid will not be affected by operation on either primary or alternate air.

4. The ADI filler openings must be conspicuously marked at or near the filler cover with: (a) The words "ADI fluid meeting the Petersen Aviation, Inc., specification"; and (b) the capacity of the tank in either pounds or gallons consistent with other ADI system markings.

Issued in Kansas City, Missouri, on April 1, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87–7980 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–CE–74–AD; Amdt. 39–5598]

Airworthiness Directives; Beech Aircraft Corporation Model A36TC Bonanza Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Beech Model A36TC airplanes which requires the modification of the fuel system in accordance with Beechcraft Mandatory Service Bulletin No. 2033, dated August 1985. Investigations of accidents involving Model A36TC airplanes following loss of engine power revealed that flooding may occur either as a result of the pilots' inadvertent selection of the emergency fuel pump switch to "ON" while attempting to retract the flaps, or as a result of the pilots' improper selection/position of the auxiliary/emergency fuel pump switches relative to fuel flow. The potential exists for inappropriate pilot actions in normal and emergency procedures which could cause engine combustion to cease due to an excessively rich fuel-air mixture. The requirements of this AD will reduce the potential for power interruptions due to flooding by removing the emergency fuel pump switch from the current location adjacent to the flap switch.

EFFECTIVE DATE: May 14, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beech Mandatory Service Bulletin No. 2033, dated August 1985, applicable to this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681–9111. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Aircraft Certification Office, ACE–140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring modification of the fuel system as described in Beechcraft Mandatory Service Bulletin No. 2033, dated August 1985, on certain Beech Model A36TC airplanes was published in the **Federal Register** on January 7, 1987 (52 FR 551). The proposal resulted from investigations of accidents involving Beech Model A36TC airplanes following loss of engine power which revealed that flooding may occur as a result of the pilots' inadvertent selection of the emergency fuel pump switch to "ON" while attempting to retract the flaps. This is primarily due to the location of the emergency fuel pump switch in close proximity to the flap switch on the upper-center instrument sub-panel.

The flaps are typically raised shortly after take-off, before significant altitude is gained. Therefore, if the engine failed due to incorrect use of the emergency fuel pump, sufficient time may not exist to identify the cause, rectify the situation and restart the engine before the aircraft strikes the earth.

It is also possible that engine flooding can occur due to the pilots' improper selection/position of the auxiliary/emergency fuel pump switches relative to fuel flow.

Beech Aircraft Corporation issued Beechcraft Mandatory Service Bulletin No. 2033 in August 1985 to minimize the possibility of engine flooding. This Service Bulletin modifies the Model A36TC fuel system, allowing the function of the emergency fuel pump switch to be incorporated with the auxiliary fuel pump switch. The emergency pump switch is thus removed from the upper-center instrument sub-panel.

Interested persons have been afforded an opportunity to comment on the

proposal. One commenter responded with two comments. The first comment requested that the AD summary and supplemental information be revised to include a statement that engine flooding can occur due to improper position/selection of the auxiliary/emergency fuel pump switches relative to fuel flow. The commenter refers to four previous A36TC accidents which resulted from engine stoppages. The FAA's investigations of these four accidents did not reveal that the engine stoppages resulted from improper selection or positioning of the auxiliary or emergency fuel pump switch.

In an accident subsequent to the four referred to, it was concluded that the probable cause of the accident was inadvertent selection of the emergency fuel pump instead of the flap switch. It was this accident which most prompted the issuance of this AD. The foregoing notwithstanding, the comment does have merit to clarify and emphasize the hazards associated with improper position/selection of the auxiliary/emergency fuel pump switches under any circumstances. Accordingly, the summary and supplemental information sections of the Final Rule reflect this change.

The second comment was a request for clarification of who will bear the cost of compliance with this AD. The FAA agrees and the Final Rule reflects that the kit and labor costs associated with incorporation of Beechcraft Mandatory Service Bulletin No. 2033, dated August 1985, will be voluntarily absorbed by Beech. This does not affect the FAA certification that this is not a major or significant rule or that it will not affect small entities.

The FAA has determined that this regulation only involves approximately 271 airplanes. Beech will provide the kit and labor costs associated with the incorporation of Beechcraft Mandatory Service Bulletin No. 2033, dated August 1985. The cost to the private sector is therefore estimated to be zero. This lack of cost precludes the AD from having a significant economic impact on any small entity under the criteria of the Regulatory Flexibility Act.

Therefore, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 39.13 of Part 39 of the FAR as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to Model A36TC (Serial Numbers EA–1 through EA–241, and EA–243 through EA–272) airplanes certificated in any category.

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

To reduce the possibility of engine flooding caused by inadvertent pilot action, accomplish the following:

(a) Modify the fuel system as described in Beechcraft Mandatory Service Bulletin No. 2033, dated August 1985.

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

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine the document(s) referred to herein at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on May 14, 1987.

Issued in Kansas City, Missouri, on March 30, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87–7978 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–CE–70–AD; Amdt. 39–5600]

Airworthiness Directives; Piper Aircraft Corporation (Ted Smith Aerostar) Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P, and PA–60–700P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Aircraft Corporation (Ted Smith Aerostar) Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P and PA–60–700P airplanes, which requires a one-time removal and inspection of the exhaust system for each engine, and replacement of failed parts. Reinstallation of the exhaust system requires special attention to the alignment, installation sequences and use of a high temperature lubricant. This action is prompted by occurrences of cracked or failed components which have caused substantial damage and an accident. The inspection and reinstallation will remove any damaged parts from service and will result in a properly aligned system installation which will prevent premature failure of the systems.

EFFECTIVE DATE: May 15, 1987.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless previously accomplished.

ADDRESSES: Piper Service Bulletin No. 818, dated February 25, 1986, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960, Telephone (305) 567–4366. This information may be examined in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Propulsion Branch, ACE–140A, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349; Telephone (404) 991–3810.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring a one-time removal and inspection of the exhaust system for cracks or deformed parts, the replacement of failed parts and proper reinstallation of the exhaust system for each engine on certain Piper Aircraft Corporation Model PA–60 Series

airplanes was published in the **Federal Register** on December 31, 1986 (51 FR 47251). The proposal resulted from at least six reports of Piper PA-60 Series airplane exhaust system failures which resulted in substantial airplane damage and at least one accident. The failure often is a broken flange at the turbocharger allowing the tailpipe to fall away; consequently, hot exhaust gas impinges on controls and structures. In certain reports the engine controls seized as a result of the hot exhaust gases. Others report substantial airplane wing structure damages. The FAA evaluation indicates that the exhaust system should be installed in a specified sequence using a high temperature lubricant to prevent misalignment and the introduction of high stress into the system. Piper Aircraft Corporation has issued Service Bulletin No. 818, dated February 25, 1986, to describe removal, inspection, and reinstallation of the exhaust system on these airplanes. Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other Piper Model PA-60 Series airplanes of the same type design, this AD is being issued requiring a one-time removal and inspection of the exhaust system for cracks or deformed parts, the replacement of failed parts and proper reinstallation of the exhaust system for each engine on Piper Aircraft Corporation Model PA-60 Series airplanes.

Interested persons have been afforded an opportunity to comment on the proposal. Only one commenter responded and opposed the proposed AD. No objections were received on the FAA determination of the related cost to the public.

Comments on the proposed AD have been paraphrased for brevity. The commenter suggested that the exhaust system could be easily inspected visually, in place, by a qualified mechanic; that the turbocharger rotors and waste gate valves are the only moving parts in the exhaust system to cause failures and this inspection will not reveal problems in these components; that an exhaust system that does not leak is already properly aligned or has realigned during the heat/cool cycles of operation; that slip joints may be properly lubricated without disassembly and that the proposed AD will do more harm than good to the existing aircraft exhaust system.

Due consideration has been given to the commenter's response; however, the FAA does not concur. A qualified mechanic cannot always detect leaks, pin holes and/or cracks in exhaust systems, nor can impending failures be predicted with any degree of certainty. There are other failure modes besides moving parts that must be considered in an evaluation of the complete exhaust system. Induced stress levels in any or all components, caused by misalignment during improper installation, can be increased greatly by the high temperatures of the exhaust system operating environment and, in some cases, can cause component failure as a result of exceeding design limits. Misaligned exhaust systems may, in some cases, seal themselves but do not properly align themselves during the heating and cooling cycle. Slip joints cannot be properly inspected for leaks and/or binding and cleaned or lubricated with the lubricant specified in the Service Bulletin and this AD without disassembly.

Finally, the FAA does not agree that dismantling the exhaust system, cleaning and visually inspecting each component, replacing all unservicable parts and reinstalling system in accordance with precise, detailed instructions could do more harm than it can correct.

Accordingly, the proposal is adopted without substantive change. One editorial change was made by listing the new address of the FAA Atlanta Aircraft Certification Office.

The FAA has determined that this regulation only involves 890 airplanes at an approximate one-time cost of $1,000 for each aircraft or a total one-time fleet cost of $890,000. The cost of compliance with this AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Piper Aircraft Corporation (Ted Smith Aerostar): Applies to the following models and serial numbers of airplanes certificated in any category:

Model	Serial numbers affected
PA-60-600 (Aerostar 600).	60-0001-003 through 60-0933-8161262.
PA-60-601 (Aerostar 601).	61-0001-004 through 61-0880-8162157.
PA-60-601P (Aerostar 601P).	61P-0157-001 through 61P-0860-8163455.
PA-60-602P (Aerostar 602P).	62P-0750-8165001 and 62P-0861-8165002 through 62P-0932-8165055 and 60-8265001 through 60-8365021.
PA-60-700P (Aerostar 700P).	60-8423001 through 60-8423025.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failed exhaust system components, accomplish the following on each engine:

(a) For affected Model PA-60-600 airplanes, remove the exhaust system components by accomplishing the following steps:

(1) Remove engine cowling.

(2) Remove exhaust stack support clamp from stack.

(3) Disconnect all stack flanges and remove complete exhaust stack assembly from each side.

(b) For affected Models PA-60-601, 601P, -602P, and -700P airplanes, remove the exhaust system components by accomplishing the following steps:

(1) Remove engine cowling.

(2) Loosen clamp on turbocharger exhaust port and slide rear section of exhaust stack aft and out.

(3) Disconnect waste gate control linkage and remove clamp attaching turbocharger waste gate.

(4) Slide waste gate section aft and out.

(5) Loosen balance tube end and center clamps, and compress balance tube.

(6) Disconnect all stack flanges and remove forward section of exhaust stack from each side.

(c) For all affected airplanes, visually inspect all exhaust system components by accomplishing the following:

(1) Clean and inspect all welds for cracks and pin holes, using a dye penetrant procedure.

(2) Inspect clamps, clamp bolts, and supports for condition and security of attachment.

(3) Inspect slip joints for signs of leaks and/or binding.

(4) Inspect stack flange mating surfaces for cracks or burns.

(5) Inspect turbocharger mounting flange on waste gate for cracks or burns.

(6) Rotate waste gate control lever to insure proper operation.

(7) Inspect gaskets for signs of leaks. Discard gaskets at each disassembly.

(d) For all affected airplanes, inspect using dye penetrant procedures, the turbocharger attachment flange on aft section exhaust pipe for cracks, especially in the welds.

(e) Prior to further flight, replace all unserviceable parts including all used gaskets.

(f) For affected Model PA–60–600 airplanes, install the exhaust system by accomplishing the following steps:

(1) Prior to reassembly, clean up all slip joints and apply Fel-Pro antiseize lubricant (Type C5–A), Piper Part Number 912–012, to exhaust pipes at slip joints.

(2) Slide forward and aft sections together. Replace parts that do not assemble freely without binding.

(3) Place new flange gaskets into position and place exhaust system onto cylinder studs at exhaust ports. Install flange nuts loosely.

(4) Partially tighten all nuts. Never fully tighten any part of the exhaust system before proceeding to another part on the same side of the engine.

(5) Inspect slip joint after stacks are installed to assure proper alignment and freedom from binding when flange nuts are tightened.

(6) Tighten each part on one side of the engine uniformly until a torque of 205–215 inch pounds has been applied.

(7) Install exhaust stack support clamp onto stack, and adjust support rod ends so that clamp can be moved along stack by hand. Distance between stack and tunnel surface should be .50 inch minimum to 1.60 inch maximum on left stack; .75 inch minimum to 1.60 inch maximum on right stack. Replace parts which do not fall within this range.

(8) Start and run engine in accordance with the appropriate flight manual, shut down engine and check for leaks and correct as required.

(9) Install cowling.

(g) For affected Models PA–60–601, –601P, 602P, and –700P airplanes, install the exhaust system by accomplishing the following:

(1) Prior to reassembly, clean all slip joints and apply Fel-Pro antiseize lubricant (Type C5–A), Piper Part Number 912–012, to exhaust pipes and waste gates at all slip joints.

(2) Slide first and second sections of exhaust stack together. Replace parts that do not assemble freely without binding.

(3) Position stack flanges and new gaskets onto exhaust ports. Install flange nuts loosely.

(4) Install V-clamp onto turbocharger waste gate flange with opening aft.

(5) Position new gasket on waste gate turbocharger exhaust port. Spread V-clamp on turbocharger waste gate flange and install waste gate onto exhaust pipe and turbocharger. Install clamp nut loosely.

(6) Install V-clamp and new gasket on turbocharger exhaust port. Spread V-clamp and install aft section of exhaust stack onto turbocharger and waste gate. Install clamp nut loosely.

(7) Install balance tube, insuring that ends extend into clamps beyond slits in tube ends, and install end clamp bolts loosely.

(8) Starting at the front of the engine and working aft, partially tighten all nuts. Never fully tighten any part of the exhaust system before proceeding to another part on the same side of the engine.

(9) Reinspect all joints after parts are installed to assure proper alignment and freedom from binding when nuts are fully tightened.

(10) Tighten each part on one side of the engine uniformly, starting at front of engine and working aft. Torque flange nuts to 205–215 inch pounds and V-clamp nuts to 45–50 inch pounds.

(11) After completing both sides of engine, tighten balance tube clamps.

(12) Reconnect and adjust waste gate control linkage per Aircraft Maintenance Manual.

(13) Start and warm engine in accordance with appropriate flight manual, shut down engine, check for evidence of leaks and correct as necessary. Retorque V-clamps to 45–50 inch pounds.

(14) Install cowling.

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

(i) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note.—Piper Aircraft Corporation Service Bulletin No. 818, dated February 25, 1986, pertains to the subject addressed by this AD.

This amendment becomes effective on May 15, 1987.

Issued in Kansas City, Missouri, on March 31, 1987.

Joseph T. Brennan,

Acting Director, Central Region.

[FR Doc. 87–7979 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–CE–12–AD; Amdt. 39– 5601]

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Avions Pierre Robin Model R2160 airplanes, which requires a visual inspection of the rudder bar for cracks and a subsequent modification to preclude the formation of additional cracks. A report of cracks has been received which may cause loss of control of the airplane. This inspection and modification will detect and correct these cracks and preclude the loss of rudder control.

EFFECTIVE DATE: April 20, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Service Bulletin (S/B) No. 109, dated April 28, 1986, applicable to this AD may be obtained from Avions Pierre Robin, Aerodrome de DIJON-Val-Suzon, Darois, Fontaine-Les-Dijon, France F–21121. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Anderson, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Herman C. Belderok, Foreign FAR 23 Section, Central Region ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION: The manufacturer, Avions Pierre Robin, received a report that fatigue cracks had been found in the rudder bar of an Australian registered Avions Pierre Robin airplane. As a result, Avions Pierre Robin has issued S/B No. 109, dated April 28, 1986, which requires a visual inspection of the rudder bars for cracks in the area where the vertical and horizontal tubes are joined, and subsequent reinspections every 100 hours time-in-service (TIS) until the area is reinforced. The French Civil Aviation Authority, the Director Generale de l'Aviation Civile (DGAC), who has responsibility and authority to maintain the continuing airworthiness of these airplanes in France, has classified this service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes by issuing a French AD No. 86–148–(A)R1, dated November 26, 1986. On airplanes operated under French registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the

certification of the DGAC combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Avions Pierre Robin S/B No 109, dated April 28, 1986, and the mandatory classification of this service bulletin by the DGAC. Based on the foregoing, the FAA has determined that the condition described herein is an unsafe condition that may exist or develop on other products of the same type design certificated for operation in the United States.

Therefore, an AD is being issued requiring a visual inspection of the rudder bars for cracks in the area where the vertical and horizontal tubes are joined, and incorporating the manufacturer's specified modification within 100 hours TIS on Avions Pierre Robin Model R2160 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Avions Pierre Robin: Applies to Model R2160 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To preclude the loss of rudder control, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this AD, visually inspect for cracks the area of each rudder bar adjacent to the point where the vertical and horizontal tubes are joined in accordance with the instructions of Avions Pierre Robin Service Bulletin (S/B) No. 109, dated April 28, 1986 (hereinafter referred to as APR S/B No. 109). If any crack is found, before further flight, reinforce all the rudder bars in accordance with the modification specified in APR S/B No. 109.

(b) Within the next 100 hours TIS after the effective date of this AD, unless previously modified in accordance with paragraph (a) of this AD, reinforce all the rudder bars in accordance with the modification specified in APR S/B No. 109.

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

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium.

All persons affected by this directive may obtain a copy of the document referred to herein upon request to Avions Pierre Robin, Aerodrome de DIJON-Val-Suzon, Darois, Fontaine-Les-Dijon, France F–21121; or may examine the document referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on April 20, 1987.

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

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87–7982 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–CE–11–AD; Amdt. 39–5599]

Airworthiness Directives; Beech Aircraft Corporation Models 65–A90; 65–A90–1 (U–21A), (JU–21A), (U–21G), (RU–21A); 65–A90–2 (RU–21B); 65–A90–3 (RU–21C); 65–A90–4 (RU–21H); B90; C90; C90A; E90; F90; H90 (T–44A); 200; B200; 200C; B200C (C–12F); 200CT; B200CT; 200T; B200T; A200 (C–12A), (C–12C); A200C (UC–12B); A200CT (C–12D), (C–12F), (RC–12D), (RC–12G), (FWC–12D); 300; 1900; and 1900C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 87–04–24, applicable to Beech Aircraft Corporation Models 65–A90; 65–A90–1 (U–21A), (JU–21A), (U–21G), (RU–21A); 65–A90–2 (RU–21B); 65–A90–3 (RU–21C); 65–A90–4 (RU–21H); B90; C90; C90A; E90; F90; H90 (T–44A); 200; B200; 200C; B200C (C–12F); 200CT; B200CT; 200T; B200T; A200 (C–12A), (C–12C); A200C (UC–12B); A200CT (C–12D), (C–12F), (RC–12D), (RC–12G), (FWC–12D); 300; 1900; and 1900C airplanes, and codifies the corresponding emergency AD letter dated February 23, 1987, into the Federal Register. This AD requires modification of the elevator trim cable system to prevent the elevator trim cable from becoming partially disengaged from the manual or electric trim cable pulley which can inhibit movement of the elevator trim tab and increase the elevator control forces, and in addition, the aft cable guard will be modified or sealed, to provide moisture protection.

EFFECTIVE DATE: April 14, 1987, to all persons except those to whom it has already been made effective by priority letter from the FAA dated February 23, 1987.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beechcraft Mandatory Service Bulletin No. 2028, Rev. III, revised February 1987, applicable to this AD may be obtained from Beechcraft Aero and Aviation Centers or Beech Aircraft Corporation, Commercial Service Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Dale A. Vassalli, Aerospace Engineer, ACE–130W, Wichita Aircraft

Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209; Telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION:

Airworthiness Directive 86-20-03, Amendment 39-5413 published September 10, 1986, in the **Federal Register**, page No. 32202 thru 32204, applicable to Beech Aircraft Corporation Models 65-90; 65-A90; 65-A90-1 (U-21A), (JU-21A), (U-21G), (RU-21A); 65-A90-2 (RU-21B); 65-A90-3 (RU-21C); 65-A90-4 (RU-21H); B90; C90; C90A; E90; F90; H90 (T-44A); 200; B200; 200C; B200C; 200CT; B200CT; 200T; B200T; A200 (C-12A), (C-12C); A200C (UC-12B); A200CT (C-12D), (RC-12D), (RC-12G), (FWC-12D); 300; 1900; and 1900C airplanes, requires modification of the elevator trim cable system. Subsequent to the issuance of AD 86-20-03 the FAA became aware of an incident wherein an aft cable guard installed per Beechcraft Service Bulletin No. 2028, Revision II, in accordance with AD 86-20-03, had experienced a frozen elevator trim control during flight. The investigation of the incident determined that moisture, which had accumulated in the elevator trim tab aft cable guard, froze at altitude and jammed the elevator trim control. It has been determined that the elevator trim tab aft cable guard on these airplanes are subject to moisture contamination, which can result in an unsafe flight condition. Therefore, the FAA is superseding AD 86-20-03 by requiring that the elevator trim tab aft cable guard be protected against moisture.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the AD. It was also determined that an emergency condition existed, that immediate corresponding action was required, and that notice and public procedure thereon was impracticable and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by priority mail letter dated February 23, 1987. The AD became effective immediately as to these individuals upon receipt of that letter, and is identified as AD 87-04-24. Subsequent to issuance of AD 87-04-24, the FAA has been informed by Beech Aircraft Corporation that the Model B200C (UC-12F) airplanes (S/N BU-1 thru BU-12) are being modified and therefore were removed from the AD effectivity list. Since the unsafe condition described therein may still exist on other Beech Aircraft Corporation Models 65-A90; 65-A90-1 (U21A), (JU-21A), (U-21G), (RU-21A); 65-A90-2 (RU-21B); 65-A90-3 (RU-21C); 65A90-4 (RU-21H); B90; C90; C90A; E90; F90; H90 (T-44A); 200; B200; 200C; B200C (C-12F); 200CT; B200CT; 200T; B200T; A200 (C-12A), (C-12C); A200C (UC-12B); A200CT (C-12D), (C-12F), (RC-12D), (RC-12G), (FWC-12D); 300; 1900; and 1900C airplanes, the AD is being published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Beech Aircraft Corporation: Applies to the following Beech airplanes certificated in any category.

Models	Serial Numbers (S/N)	Reference Service Instruction No.
65-A90, B90, C90, C90A	LJ-114 thru LJ-1139	Beechcraft Mandatory Service Instruction No. 2028, Rev. III, revised February 1987.
E90	LW-1 thru LW-347	
F90	LA-2 thru LA-236	
200, B200	BB-2, BB-6 thru BB-1211; BB-1213 thru BB-1253; BB-1255 thru BB-1261; BB-1263 thru BB-1267.	
200C, B200C	BL-1 thru BL-112 and BL-124 thru BL-127	
200CT, B200CT	BN-1 thru BN-4	
200T, B200T	BT-1 thru BT-31	
300	FA-1 thru FA-38 and FA-40 thru FA-50	
1900	UA-1 thru UA-3	
1900C	UB-1 thru UB-62	
H90 (T-44A)	LL-1 thru LL-18, LL-20 thru LL-31, LL-33 thru LL-40, LL-42 thru LL-48, and LL-50 thru LL-61	Beech T-44A Service Instructions No. T-44A-0058, Rev. 1.
A200 (C-12A)	BD-1 thru BD-30	Beech C-12 Service Instructions No. C-12-0103, Rev. 1.
A200 (C-12C)	BC-1 thru BC-75	
A200CT (C-12D)	BP-1, BP-22, BP-24 thru BP-39; BP-40 and BP-45	
A200CT (RC-12D)	GR-1 thru GR-13	
A200CT (RC-12G)	FC-1 thru FC-3	
A200CT (FWC-12D)	BP-7 thru BP-11	
A200C (UC-12B)	BJ-1 thru BJ-66	
A200CT (C-12D)	BP-46 thru BP-51	
A200CT (C-12F)	BP-52 thru BP-63	Beech C-12 Service Instructions No. C-12-0112.
B200C (C-12F)	BL-73 thru BL-112 and BL-118 thru BL-123	

Models	Serial Numbers (S/N)	Reference Service Instruction No.
65-A90-1 (U-21A)	LM-1 thru LM-63, LM-65, LM-67 thru LM-69, LM-71 thru LM-107, and LM-112 thru LM-124	Beech U-21 Service Instruction No. U-21-0002, Rev. 1
65-A90-1 (JU-21A)	LM-64, LM-66, LM-70	
65-A90-1 (U-21G)	LM-125 thru LM-141	
65-A90-1 (RU-21A)	LM-108 thru LM-111	
65-A90-2 (RU-21B)	LS-1 thru LS-3	
65-A90-3 (RU-21C)	LT-1 and LT-2	
65-A90-4 (RU-21H)	LU-1 thru LU-16	

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

To preclude malfunction of the elevator trim cable system, accomplish the following:

(a) Within the next 10 hours time-in-service, perform the following:

(1) For Models 65-A90, B90, C90, C90A airplanes (S/N LJ-114 thru LJ-1110), and Model E90 airplanes (S/N LW-1 thru LW-347), which have complied with AD 86-20-03, paragraph (b), and for Model C90A airplanes (S/N LJ-1111 thru LJ-1139), which have a redesigned elevator trim cable system installed at the Beech factory without moisture protection; modify the elevator trim system in accordance with Part IV of Beechcraft Service Bulletin No. 2028, Rev. III, dated February 1987.

(2) For Model F90 airplanes (S/N LA-2 thru LA-235); Models 200 and B200 airplanes (S/N BB-2, BB-6 thru BB-1211 and BB-1213 thru BB-1217); and for Models 200C and B200C airplanes (S/N BL-1 thru BL-112 and BL-124); and for Models 200CT and B200CT airplanes (S/N BN-1 thru BN-4); Models 200T and B200T airplanes (S/N BT-1 thru BT-30), which have complied with AD 86-20-03, paragraph (b), and for Model F90 airplanes (S/N LA-236); and for Models 200 and B200 airplanes (S/N BB-1218 thru BB-1253, BB-1255 thru BB-1261, BB-1263 thru BB-1267); and for Model B200C airplanes (S/N BL-125 thru BL-127); and for Model B200T airplanes (S/N BT-31), which have a redesigned elevator trim cable system installed at the Beech factory without moisture protection; modify the elevator trim system in accordance with Part V of Beechcraft Service Bulletin No. 2028, Rev. III, dated February 1987.

(3) For Model 1900 airplanes (S/N UA-1 thru UA-3) and for Model 1900C airplanes (S/N UB-1 thru UB-44), which have complied with AD 86-20-03, paragraph (b), and for Model 1900C airplanes (S/N UB-45 thru UB-62), which have a redesigned elevator trim cable system installed at the Beech factory without moisture protection; modify the elevator trim system in accordance with Part VI of Beechcraft Service Bulletin No. 2028, Rev. III, dated February 1987.

(b) For those airplanes that have not been modified in accordance with paragraph (b) of AD 86-20-03, within the next 25 hours time-in-service, accomplish the following:

(1) Check the operation of the elevator trim system and mark the elevator trim indicator scale in accordance with Part I or Part II of Beech Service Bulletin No. 2028, Rev. III, dated February 1987.

(2) For Models 65-A90, B90, C90, C90A, and E90 airplanes, mark the elevator trim tab push rods in accordance with Part I or Part II of Beech Service Bulletin No. 2028, Rev. III, dated February 1987.

Note.—The following airplanes have been previously marked by the manufacturer per paragraphs (a)(1) and (a)(2) of AD 86-20-03:

Models C90A (S/N LJ-1077 thru LJ-1110), F90 (S/N LA-223 thru LA-235), B200 (S/N BB-1193 thru BB-1217), B200C (S/N BL-72 thru BL-112 and BL-124), 300 (S/N FA-1 thru FA-38 and FA-40 thru FA-50), 1900 (S/N UA-1 thru UA-3), and 1900C (S/N UB-9 thru UB-44).

(3) Place the Elevator Trim System Preflight Check Procedure, shown in Attachment 1 of this AD, in the Limitations Section of the FAA Approved Airplane Flight Manual for the Models 65-A90, B90, C90, E90, and 200T/200CT airplanes; and the Limitations Section of the Pilot's Operating Handbook and the FAA Approved Airplane Flight Manual for the Models C90, C90A, F90, 200/200C, B200/B200C, B200T, B200CT, 300, and 1900/1900C airplanes.

(c) Prior to May 15, 1987, modify the elevator trim system on all airplanes which have not complied with the requirements of paragraph (a) of this AD, in accordance with Part III of Beechcraft Service Bulletin No. 2028, Rev. III, dated February 1987.

(d) Compliance with paragraph (b) of this AD is no longer necessary after the modification required in paragraph (c) of this AD is accomplished.

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

(f) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beechcraft Aero and Aviation Centers or Beech Aircraft Corporation, Commercial Service Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine copies of the document(s) referred to herein at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 86-20-03, Amendment 39-5413.

This amendment becomes effective on April 14, 1987, to all persons except those to whom it has already been made effective by priority letter from the FAA dated February 23, 1987, and is identified as AD 87-04-24.

Issued in Kansas City, Missouri, on March 30, 1987.

Paul K. Bohr,

Director, Central Region.

Attachment 1

[87-04-24]

Operating Limitation

The Elevator Trim System Preflight check procedure, as defined below, must be conducted prior to each flight.

To verify that the elevator trim cable is not fouled or disengaged from the cable drum, the following Elevator Trim System Preflight Check is required prior to each flight of the Beech Model 65-A90, B90, C90, C90A, E90, F90, 200, B200, 200C, B200C, 200CT, B200CT, 200T, B200T, 300, 1900 and 1900C airplanes:

Cockpit.

1. Control Locks—*Remove.*

2. Elevator. Trim:

a. All airplanes except 1900/1900C—Set to "O" Units.

b. 1900/1900C airplanes—*Set Two Units Nose Up.*

Caution

The elevator trim system must not be forced past the limits which are indicated on the elevator trim indicator scale either manually, electrically (except Model 300) or by action of the autopilot (except Model 300).

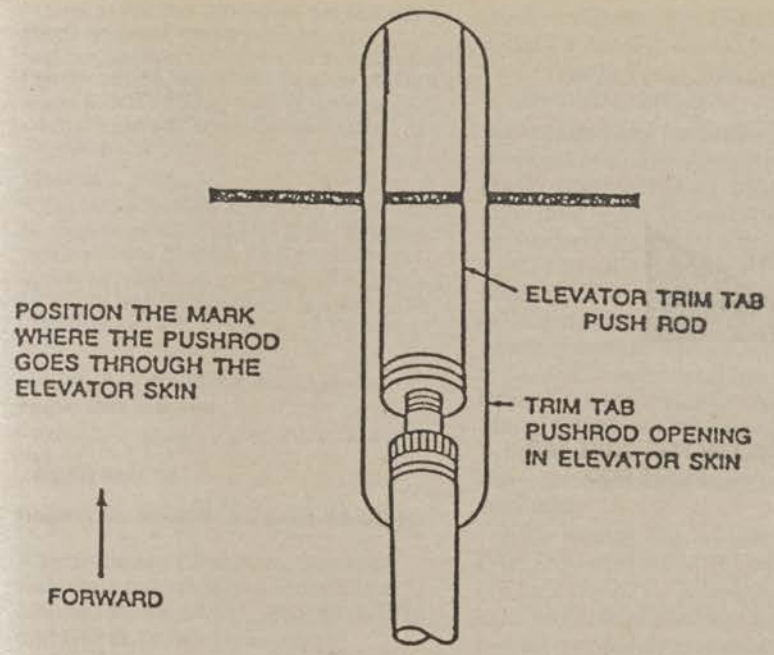
Tail Section.

1. Elevator Trim Tab.

a. *Verify* "O" (*Neutral*) *Position.*

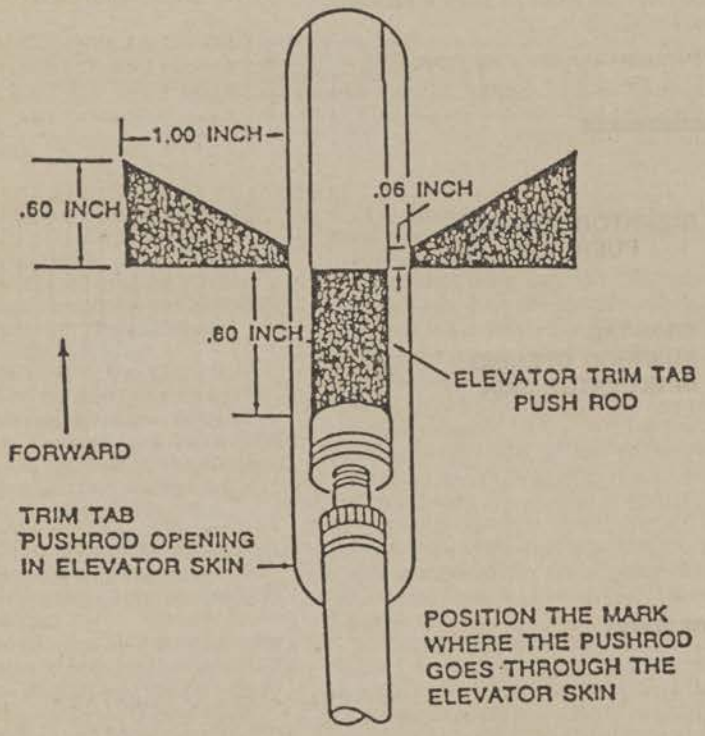
2. On Model 65-A90, B90, C90, C90A and E90 airplanes, the elevator trim tab "O" (neutral) position is determined by observing that the alignment marks on the elevator trim tab pushrods align with the alignment marks on the elevator (See Figure 1 or 2 below), when the elevator is resting against the downstops.

BILLING CODE 4910-13-M



Pushrod Marking (Temporary)
Figure 1

87-04-24



Pushrod Marking (Permanent)
Figure 2

BILLING CODE 4910-13-C

3. On Model F90, 200 Series, 300 and 1900/1900C airplanes, the elevator trim tab "O" (neutral) position is determined by observing that the trailing edge of the elevator trim tab aligns with the trailing edge of the elevator, when the elevator is resting against the downstops.

Warning

The above Preflight Inspection check *Must* be repeated prior to take-off if the elevator trim is allowed to reach limit travel at any time prior to take-off as a result of *Manual, Electrical* (except Model 300) OR *Autopilot* (except Model 300) *Operation* of the trim system.

[FR Doc. 87-7981 Filed 4-9-87; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-ASW-33, Amdt. 39-5534]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model SA315, SE3160, SA316, and SA319 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which imposes a finite service life for certain original and repaired main gearbox support "A" frame assemblies installed on Aerospatiale Model SA315, SE3160, SA316, and SA319 series helicopters. This amendment is needed to remove the finite life for certain "A" frames when used on a Model SE3160 helicopter for the reason that these "A" frames have been determined to have an unlimited service life when used on Model SE3160 helicopters.

EFFECTIVE DATE: May 11, 1987.

The incorporation by reference of certain publications in the regulations is approved by the Director of the Federal Register as of May 11, 1987.

Compliance: As prescribed in the AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2710 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support. These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: John Varoli, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium APO New York 09667, or James H. Major, Rotorcraft Standards Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101, telephone number (817) 624-5117.

SUPPLEMENTARY INFORMATION: A proposal to amend Amendment 39-4787 (49 FR 2239), AD 84-01-03 was published in the **Federal Register** on November 10, 1986 (51 FR 40811). AD 84-01-03 currently imposes a finite service life for certain original and repaired main gearbox support "A" frame assemblies and requires replacement of certain affected assemblies within 50 hours' time in service for Aerospatiale Model SA315, SA316, and SA319 series helicopters. The AD also presently contains an incorporation by reference statement.

After issuing Amendment 39-4787, the FAA determined that the finite service life for certain "A" frame assemblies used on Model SE3160 helicopters may be increased from 11,000 hours to unlimited hours' time in service as stated in Aerospatiale Alouette Service Bulletin (SB) No. 01.49, Revision 1, and that an additional model should be added to the AD. Therefore, Amendment 39-4787 is amended by incorporating by reference the information in SB No. 01.49, Revision 1, dated May 30, 1986. In addition, the applicability statement and paragraph (b) are amended to add the Model SE3160.

No comments were received on the notice proposal; therefore, the proposal is adopted without change.

The FAA has determined that this regulation only involves one helicopter model of which fourteen are registered in the United States. It relieves a requirement for this model and imposes no additional economic burden. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "For Further Information Contact."

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By amending Amendment 39-4787 (49 FR 2239), AD 84-01-03, as follows:

a. Revise the applicability statement by adding "SE3160" between SA315 and SA316.

b. Revise paragraph (b) and its note paragraph to read as follows:

* * * * *

(b) For Models SE3160, SA316, and SA319 series helicopters, comply with Alouette SB No. 01.49, Revision 1, dated May 30, 1986, within 50 hours' time in service after the effective date of this AD amendment. This bulletin establishes a finite service life for certain identified original and repaired "A" frame assemblies for these helicopters and permits only one-time replacement/repair of an eye end-fitting on each "A" frame assembly. Replacing a repair eye end-fitting with another repair eye end-fitting is prohibited.

Note: Revision A of the service bulletin establishes for the Model SE3160 an 11,000-hour service life limit for certain original and repaired "A" frames and a 5,500-hour service life limit for certain other original and repaired "A" frames. Revision 1, dated May 30, 1986, instituted on Model SE3160 helicopters an unlimited service life for original "A" frames whose serial number is preceded by letters other than "RO". (Frames with RO serial numbers retain the 11,000-hour and 5,500-hour service life.) For Model SE3160 helicopters, a repair eye end-fitting is limited to 5,500 hours service life.

For the Models SA316 B and C and SA319B helicopters, the service bulletin, Revision A and 1, retains the present 3,200 or 1,600-hour service life limit for certain original and repaired "A" frames and eye end-fittings and establishes a 1,600-hour service life for certain other original and repair eye end-fittings.

* * * * *

This amendment amends Amendment 39-4787 (49 FR 2239), AD 84-01-03.

This procedure shall be done in accordance with Aerospatiale Alouette SB No. 01.49, Revision 1, dated May 30, 1986. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1). Copies may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention:

Customer Support. Copies may be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

Issued in Fort Worth, Texas, on March 3, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87-7987 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 376 and 399

[Docket No. 70340-7040]

Clarifications of Export Licensing Policy

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule, which neither expands nor limits the provisions of the Export Administration Regulations, clarifies existing export licensing policy.

Section 370.11 is amended to explain how an exporter may request notification from the Office of Export Licensing when an export license application or reexport request is reviewed by COCOM, an international security export control system. Section 376.14 is amended to clarify export policy on certain crime control and detection commodities. In addition, Supplement No. 1 to § 399.1 (the Commodity Control List) is amended to correct the formula for calculating the "average seek time" of disc drives controlled by entry 1565A.

EFFECTIVE DATE: This rule is effective April 10, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian or John Black, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377-2440.

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 contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection of information has been approved by the Office of Management and Budget under control number 0625-0001.

List of Subjects in 15 CFR Parts 370, 376 and 399

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

PARTS 370, 376, AND 399—[AMENDED]

Accordingly, the Export Administration Regulations 15 CFR Parts 370, 376, and 399 are amended as follows:

1. The authority citation for Parts 370 and 376 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).

2. 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 of October 27, 1986 (51 FR 39505, October 29, 1986).

3. Paragraph (c) of § 370.11 is revised to read as follows:

§ 370.11 Information to exporters.

* * * * *

(c) *Request for notification of COCOM review of application.* The United States participates in an international security export control system. The Coordinating Committee (COCOM) of this system reviews proposed transactions to export or reexport certain strategic commodities or technical data to the People's Republic of China and to Country Groups, Q, W and Y. The Office of Export Licensing refers certain export license applications and requests for reexport authorization to COCOM for review. Such referral will add two months or more to the usual processing time.

The Office of Export Licensing will notify the applicant, upon request, when a proposed export or reexport is referred to COCOM for review. Request for notification should be made at the time the license application or reexport request is submitted by inserting the phrase "notification of COCOM review requested" in Item 15 of Form ITA-622P, Application for Export License.

* * * * *

4. Paragraph (a) of § 376.14 is amended by inserting a sentence before the final sentence and revising the final sentence, as follows:

§ 376.14 Crime control and detection commodities.

(a) *Export license requirements.* * * * Applications for validated export licenses for "specially designed implements of torture" will be denied. Applications for other items controlled under this section will generally be considered favorably on a case-by-case basis unless there is evidence that the government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations.

* * * * *

§ 399.1 [Amended]

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising the definition of "average seek time" (in paragraph (c) under "access rate") in Advisory Note 16 to read as follows:

1565A Electronic computers, "related equipment," equipment or systems containing electronic computers, and specially designed components and accessories for these electronic computers and "related equipment."

* * * * *

Advisory Note 16: The following are definitions of terms used in ECCN 1565A:

"access rate"—

(c) Of a seek mechanism (R_{as})—

* * * * *

'average seek time' (t_{sa})—

The sum of the 'maximum seek time' (t_{smax}) and twice the 'minimum seek time' (t_{smin}), divided by three.

Thus:

$$T_{sa} = \frac{T_{smax} + 2T_{smin}}{3}$$

* * * * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 6 (Metals, Minerals, and Their Manufactures), ECCN 5680B is amended by removing the Advisory Note.

Dated: April 7, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-8042 Filed 4-9-87; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 86F-0263]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of isobutylene-butene copolymers in the manufacture of expanded foam-polystyrene articles and in release coatings on backings or linings for pressure-sensitive adhesive labels. This action responds to a petition filed by Permethyl Corp.

DATES: Effective April 10, 1987; objections by May 11, 1987. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 177.1430 effective on April 10, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 14, 1986 (51 FR 25404), FDA announced that a food additive petition (FAP 6B3925) had been filed by Permethyl Corp., Frazer, PA 19355, proposing that § 177.1430 *Isobutylene-butene copolymers* (21 CFR 177.1430) be amended to provide for the safe use of isobutylene-butene copolymers in the manufacture of foam-polystyrene articles and in release coatings or linings for pressure-sensitive adhesive labels.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the food additive is safe and that the regulations should be amended as set forth below. For clarity, the agency is changing the format for § 177.1430. Although this regulation is restructured, the changes have not affected the status of the previously listed uses of these copolymers.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before May 11, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.1430 is revised to read as follows:

§ 177.1430 Isobutylene-butene copolymers.

Isobutylene-butene copolymers identified in paragraph (a) of this section

may be safely used as components of articles intended for use in contact with food, subject to the provisions of this section.

(a) For the purpose of this section, isobutylene-butene copolymers consist of basic copolymers produced by the copolymerization of isobutylene with mixtures of *n*-butenes such that the finished basic copolymers contain not less than 45 weight percent of polymer units derived from isobutylene and meet the specifications prescribed in paragraph (b) of this section when tested by the methods described in paragraph (c) of this section.

(b) Specifications:

Isobutylene-butene copolymers	Molecular weight (range)	Viscosity (range)	Maximum bromine value
1. Used as release agents in petroleum wax complying with § 178.3710 of this chapter.	300 to 5,000	40 to 20,000 seconds Saybolt at 200 °F.	40
2. Used as plasticizers in polyethylene complying with § 177.1520 and in polystyrene complying with § 177.1640 of this chapter.	300 to 5,000	40 to 20,000 seconds Saybolt at 200 °F.	40
3. Used as components of nonfood articles with §§ 175.300, 176.170, 176.210, 177.2260(d)(2), 177.2800, and 178.3570 (provided that addition to food does not exceed 10 parts per million), or § 176.180 of this chapter.	300 to 5,000	40 to 20,000 seconds Saybolt at 200 °F.	40
4. Used as production aids in the manufacture of expanded (foamed) polystyrene articles complying with § 177.1640 of this chapter.	150 to 5,000	Less than 20,000 seconds Saybolt at 200 °F.	90
5. Used in release coatings on backings or linings for pressure-sensitive adhesive labels complying with § 175.125 of this chapter.	150 to 5,000	Less than 20,000 seconds Saybolt at 200 °F.	90

(c) The analytical methods for determining whether isobutylene-butene copolymers conform to the specifications in paragraph (b) are as follows:

(1) *Molecular weight.* Molecular weight shall be determined by American Society for Testing and Materials (ASTM) method D2503–82, "Standard Test Method for Molecular Weight (Relative Molecular Mass) of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) *Viscosity.* Viscosity shall be determined by ASTM method D445–74, "Test for Kinematic Viscosity of Transparent and Opaque Liquids," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

(3) *Maximum bromine value.* Maximum bromine value shall be determined by ASTM method D1492–78, "Standard Test Method for Bromine Index of Aromatic Hydrocarbons by Coulometric Titration," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (c)(1) of this section.

(d) The provisions of this section are not applicable to isobutylene-butene copolymers used as provided under § 175.105 of this chapter.

Dated: March 24, 1987.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–8002 Filed 4–9–87; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Morantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc., providing for removal of the label statement requiring overnight withholding of feed prior to treating cattle with a Type C morantel tartrate feed.

EFFECTIVE DATE: April 10, 1987.

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

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA 92–444 providing revised labeling for use of 0.44 to 4.4 grams of morantel tartrate per pound of Type C cattle feed to be used for removal and control of mature gastrointestinal nematode infections. The revision provides for removing the statement that nonmedicated feed be withheld overnight prior to treatment.

The supplement is approved and 21 CFR 558.360(d)(3) is amended accordingly.

Approval of this supplement does not change the approved conditions of use of the drug. Data in the original application demonstrated that the overnight withholding of feed is not necessary; the statement was included to reflect usual practice in the beef cattle husbandry. The animal still receives the same amount of drug. Approval did not require new effectiveness or safety data. Therefore, a freedom of information summary for approval of the supplement is not required.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues as follows:

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

§ 558.360 [Amended]

2. In § 558.360 *Morantel tartrate* in paragraph (d)(3) by removing "Withhold feed overnight prior to treatment to ensure ration will be readily consumed."

Dated: April 3, 1987.

Richard A. Carnevale,

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

[FR Doc. 87–8004 Filed 4–9–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-87-1683; FR-2338]

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

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

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

SUMMARY: This notice adds the following localities, recently approved by the Department, to the annual HUD list of areas (October 1, 1986, 51 FR 34961) which are eligible for high cost mortgage limits under the National Housing Act and its amendments: Talbot County, Maryland; Huntsville, Alabama MSA; Bradenton, Florida MSA; and Little Rock, Arkansas.

This notice also revises the list by (1) adding the mortgage limits for Currituck County, North Carolina; Burleigh and Morton Counties, North Dakota; and Orange County, New York PMSA, which were inadvertently omitted from the annual list, (2) changing the two family mortgage limits for the Chicago, Illinois PMSA; Lake County, Illinois PMSA, Joliet, Illinois PMSA; and Aurora-Elgin Illinois PMSA, and (3) revising the limits for Middlesex County, Connecticut.

EFFECTIVE DATE: April 10, 1987.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, Room 9270; telephone (202) 755-6720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160; telephone (202) 755-5210; 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1710 through 1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Developoment Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high cost limits for insured mortgages in Alaska, Guam and Hawaii.

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

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

This notice adds the following localities recently approved by the Department to the annual HUD list of areas (October 1, 1986, 51 FR 34961) which are eligible for high cost mortgage limits under the National Housing Act and its amendments: Talbot County, Maryland; Huntsville, Alabama MSA; Bradenton, Florida MSA; and Little Rock, Arkansas.

The notice also revises the list by (1) adding the mortgage limits for Currituck County, North Carolina; Burleigh and Morton Counties, North Dakota; and Orange County, New York PMSA, which were inadvertently omitted from the annual list and (2) changing the two family mortgage limits for the Chicago, Illinois PMSA; Lake County, Illinois PMSA; Joliet, Illinois PMSA; and Aurora-Elgin, Illinois PMSA.

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

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam and Hawaii):* To determine the high cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Talbot County, Maryland has a one family limit of $90,000. The combination home and lot loan limit for Talbot County is $90,000 × .80, or $72,000.

B. *Section 2(b)(1)(E), Lot only (excluding Alaska, Guam and Hawaii):* To determine the high cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Talbot County, Maryland has a one family limit of $90,000. The lot only loan limit for Talbot County is $90,000 × .20, or $18,000.

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

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

1. For manufactured homes: $56,700. ($40,500 × 140%.)
2. For combination manufactured homes and lots: $75,600 ($54,000 × 140%.)
3. For lots only: $18,900. ($13,500 × 140%.)

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

HUD Field Office

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Region I				
Hartford, CT				
Middlesex County	$90,000	$101,300	$122,650	$142,650
Region II				
New York, NY				
Orange County, NY PMSA: Orange County	90,000	101,300	122,650	142,650

HUD Field Office Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Region III				
Baltimore, MD				
Talbot County	90,000	101,300	122,650	142,650
Region IV				
Birmingham Office				
Huntsville, AL MSA, Madison County	78,600	88,500	107,550	124,100
Region IV				
Greensboro Office				
Currituck County	76,500	86,000	104,500	120,500
Region IV				
Tampa Office				
Bradenton, FL MSA, Manatee County	72,350	81,500	99,050	114,300
Region V				
Chicago Office				
Chicago, IL PMSA:				
Cook County, DuPage County, McHenry County	87,250	98,300	119,400	137,800
Lake County, IL PMSA:				
Lake County	87,250	98,300	119,400	137,800
Joliet, IL PMSA:				
Grundy County, Will County	87,250	98,300	119,400	137,800
Aurora-Elgin, IL PMSA:				
Kane County, Kendall County	87,250	98,300	119,400	137,800
Region VI				
Little Rock Office				
Little Rock, AK MSA:				
Faulkner County, Lenoke County, Pulaski County, Saline County	82,150	92,550	112,450	129,750
Region VIII				
Fargo Office				
Fargo-Moorhead, ND-MN MSA:				
Cass County, ND	77,900	87,750	106,600	123,000
Grand Forks, ND	72,500	81,650	99,250	114,500
Other areas:				
Burleigh County	70,750	79,700	96,850	111,750
Morton County	70,750	79,700	96,850	111,750

Dated: April 1, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87-8102 Filed 4-9-87; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 3283

[Docket No. R-87-1331; FR-2329]

Revision of HUD's List of State Administrative Agencies

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

ACTION: Final rule.

SUMMARY: This rule updates HUD's list of State administrative agencies that have been fully or conditionally approved by the Secretary to enforce HUD's manufactured home construction and safety standards.

EFFECTIVE DATE: May 20, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. G. Robert Fuller, Chief, Compliance Branch, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-6920. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 623 of the National Mobile Home Construction and Safety Standards act of 1974 (Act) gives each State the authority to: (1) Assume the responsibility for the enforcement of the Department's manufactured home construction and safety standards; (2) submit a State plan to enforce such HUD standards to the Secretary for approval; and (3) designate a State agency or agencies (SAA) to administer its manufactured home enforcement plan.

The Department compiles and maintains a list of State administrative agencies, which list is included in HUD's guidelines for the content of consumer manuals to be provided to manufactured home purchasers by manufacturers.

Since this final rule only updates the list of SAA's, the Department believes it is unnecessary to solicit public comment before publication of this rule for effect.

The Department's revision of its list of State administrative agencies constitutes an internal administrative procedure that 24 CFR 50.20 excludes from the requirements of 24 CFR Part 50—the HUD rules implementing section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

This rule is not a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations, issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities because it only updates HUD's list of state administrative agencies that enforce the Department's manufactured home construction and safety standards.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1986 under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 3283

Mobile homes, Consumer protection, Warranties.

Accordingly, the Department amends 24 CFR Part 3283 as follows:

PART 3283—MANUFACTURED HOME CONSUMER MANUAL

1. The authority citation for 24 CFR Part 3283 continues to read as follows:

Authority: Secs. 617 and 625 of the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5416 and 5424; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

2. Sections 3283.102 (c) and (d) are revised to read as follows:

§ 3283.102 Statements about the Act and its protections.

* * * * *

(c) The manual should include a list of the State Administrative Agencies (SAAs) that have been approved or

conditionally approved under § 3282.305 of this part. The list should include all SAAs listed in this section as of the date the manual or revision is prepared for printing. Manufacturers may contact HUD for any update to the SAA list that appears in this section by sending a stamped, self-addressed envelope to: List Control, Office of Manufactured Housing and Regulatory Functions, Room 4224, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000.

The following States have been approved or conditionally approved to act as SAAs:

State, Agency Name, Address and Telephone Number

Alabama—Alabama Manufactured Housing Commission, 908 South Hull Street, Montgomery, Alabama 36130–3401, (205) 261–4036

Arizona—Office of Manufactured Housing, 801 E. Jefferson, Suite 202, Phoenix, Arizona 85034, (602) 255–4072

Arkansas—Manufactured Home Commission, 1022 High Street, Suite #505, Little Rock, Arkansas 72202, (501) 371–1641

California—Manufactured Housing Section, Division of Codes & Standards, Department of Housing and Community Development, P.O. Box 31, Sacramento, California 95801, (916) 323–9803

Colorado—Division of Housing, Department of Local Affairs, 1313 Sherman Street, Room 419, Denver, Colorado 80203, (303) 866–2033

Florida—Department of Highway Safety and Motor Vehicles, Division of Motor Vehicles, Neil Kirkman Building, Room A 129, 2900 Apalachee Parkway, Tallahasse, Florida 32301–8209, (904) 488–7657

Georgia—State Fire Marshal's Office, Manufactured Homes Division, 620 West Tower, No. 2 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334, (404) 656–2064

Idaho—Department of Labor and Industrial Service, 277 North Sixth Street, Boise, Idaho 83720, (208) 334–3896

Indiana—Department of Fire Prevention and Building Safety, Industrialized Building Systems/Code Enforcement Div., 1099 N. Meridian Street, Suite 900, Indianapolis, Indiana 46204, (317) 232–1405

Iowa—Building Code Bureau, Division of the State Fire Marshall, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, (515) 281–3807

Kentucky—Department of Housing, Building and Construction, U.S. 127 South Building, Frankfort, Kentucky 40601, (502) 564–3626

Louisiana—Mobile Home Division, 1033 North Lobdell Avenue, Baton Rouge, Louisiana 70806, (504) 925–4911

Maine—Manufactured Housing Board, Department of Professional and Financial Regulation, State House Station 32, Augusta, Maine 04333, (207) 289–2955

Maryland—Building Codes Administration-DECD, Department of Economic and Community Development, 45 Calvert Street, Annapolis, Maryland 21401, (301) 974–2701

Michigan—Department of Commerce, Mobile Home Division, Corporation & Securities Bureau, 6546 Mercantile Way, P.O. Box 30222, Lansing, Michigan 48909, (517) 334–6203

Minnesota—Department of Administration, Building Codes and Standards Division, 408 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101, (612) 296–4628

Mississippi—Office of the Fire Marshall, 416 Woolfolk Building, P.O. Box 22542, Jackson, Mississippi 39205–2542, (601) 359–1061

Missouri—Public Service Commission, Mobile Homes and Recreational Vehicles Division, P.O. Box 360, Jefferson City, Missouri 65102, (314) 751–7119

Nebraska Department of Health, Division of Housing and Environmental Health, 301 Centennial Mall South, P.O. Box 95007, Lincoln, Nebraska 68509, (402) 471–2541

Nevada—Manufactured Housing Division, Nevada Department of Commerce, Capitol Complex, Carson City, Nevada 89710, (702) 885–4298

New Jersey—Department of Community Affairs, Division of Housing and Development-BCCE, CN 805 Manufactured Housing Construction, Trenton, New Jersey 08625–0804, (609) 292–7142

New Mexico—Regulation and Licensing Department, Manufactured Housing Division, Santa Fe, New Mexico 87503, (505) 827–6340

New York—Housing and Building Codes Bureau, Division of Housing and Community Renewal, One Fordham Plaza, Bronx, New York 10458
(212) 519–5273 (Kessner)
(212) 488–4910 (Jordan)

North Carolina—Department of Commerce, Council, Boards & Government Relations Division, P.O. Box 26307, Raleigh, North Carolina 27611, (919) 733–3901

Oregon—Department of Commerce, Building Codes Division, MHRV Section, 401 Labor and Industries Building, Salem, Oregon 97310, (503) 378–8451

Pennsylvania—Division of Manufactured Housing, Department of Community Affairs, Room 509, Forum Building, Harrisburg, Pennsylvania 17120, (717) 787–9682

Rhode Island—Department of Community Affairs, Building Commission, 1270 Mineral Spring Avenue, North Providence, Rhode Island 02904, (401) 277–3033

South Carolina—Manufactured Housing Section, Budget and Control Board, Division of General Services, 300 Gervais Street, Columbia, South Carolina 29201, (803) 758–5378

South Dakota—Department of Commerce and Regulation, Commercial Inspection, 118 W. Capitol, Pierre, South Dakota 57501, (605) 773–3697

Tennessee—Department of Commerce and Insurance, Division of Fire Prevention, 1808 West End Building, Suite 500, Nashville, Tennessee 37219–5319, (615) 741–7170

Texas—Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711, (512) 463–5520

Utah—Department of Business Regulation, Contractors Division-MH & RV, P.O. Box 45802, Salt Lake City, Utah 84145, (801) 530–6727

Virginia—Division of Building Regulatory Services, Department of Housing and Community Development, 205 N. 4th Street, Room M–4, Richmond, Virginia 23219, (804) 786–4846

Washington—Department of Labor and Industries, Construction Compliance Inspection, 520 S. Water Street, Olympia, Washington 98504, (206) 586–0215

Wisconsin—Department of Industry, Labor and Human Relations, Safety and Building Division, P.O. Box 7969, Madison, Wisconsin 53707
(608) 266–1748
(608) 267–7935 (Turner)

(d) The manual should state that the Department of Housing and Urban Development (HUD) is the Federal agency administering the Act and that any questions concerning the Act or a consumer's rights under the Act should be directed to HUD. The manual should advise consumers that in order to contact HUD, they should refer to the Department of Housing and Urban Development under listings for the U.S. Government in their telephone book. In calling or writing the local HUD office, consumers should be directed to address their inquiry or call to the "Consumer Complaint Officer" in their local HUD or FHA Office. Consumers should be advised that they may contact the Central HUD Office directly by writing or calling the Office of Manufactured Housing and Regulatory Functions, Compliance Branch, telephone (202) 755–6920 or (202) 755–6584. (These are not toll-free numbers.)

Dated: April 2, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87–7698 Filed 4–9–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD12 86–13]

Anchorage Regulations; San Francisco Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the designation of San Francisco Bay Anchorage No. 3, Belvedere Cove, as a Federal General Anchorage because of continued multi-use conflicts, lack of significant anchorage use, and the availability of other nearby anchorage areas.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Lieutenant Stephen J. Danscuk at (415) 437–3465.

SUPPLEMENTARY INFORMATION: On 24 November 1986 the Coast Guard

published a Notice of Proposed Rulemaking in the **Federal Register** for these regulations (51 FR 42269). Interested persons were requested to submit comments and 4 comments were received.

Drafting Information

The drafters of these regulations are Lieutenant Stephen J. Danscuk, project officer, Twelfth Coast Guard District Marine Safety Division, and Lieutenant Commander Wayne Raabe, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Comments

Four comments were received on the proposed regulations. All four recommended reconsideration of the removal of the Federal anchorage designation and protested the elimination of a convenient anchorage. Three responses mentioned the sheltered, uncrowded nature of the cove and the lack of other nearby safe anchorage for small vessels. One response cited personal use of the anchorage area and the physical, visual and aesthetic attributes of the area as a reason for continued designation as a Federal general anchorage. Finally, one respondent stated his rights as a citizen to use of the navigable waters was no less than that of small boaters or sailing classes.

The Coast Guard acknowledges that limited use of the anchorage area by individuals may occur. However, the Coast Guard does not believe that this limited use or the comments received are sufficient cause for continued designation as a Federal anchorage. Sufficient sheltered small boat anchoring exists in the immediate vicinity in the Richardson Bay Special Anchorage Area or in nearby San Francisco Bay Anchorages 4 or 10. These alternate anchorage areas are within 4 nautical miles of Belvedere Cove. Further, the Coast Guard does not believe that simple aesthetic attributes of an area are sufficient grounds for continued designation as a federal anchorage ground. The Coast Guard's primary concern is safety on the navigable waters. Significant multi-use conflicts currently exist in the area between anchored vessels, mooring floats, sailing classes, and other small boats which continue to pose a safety hazard to vessels and other users, and would be reduced by removing the designation of this area as an anchorage ground. Accordingly, in view of the continued multi-use conflicts, lack of significant anchorage use, the availability of other nearby anchorage areas, and the non-substantial response indicating a continuing need for this anchorage, the Coast Guard concurs with the proposed removal of Belvedere Cove as a Federal General Anchorage and finds it appropriate as a change to existing federal regulations.

Economic Assessment and Certification

These 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 has been found to be so minimal that a full regulatory evaluation is unnecessary. There is no economic impact associated with removal of the designation of Belvedere Cove as a general anchorage.

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.

Final Regulations

In consideration of the foregoing, Chapter 1, Part 110, of Title 33, Code of Federal Regulations, is amended as follows:

PART 110—ANCHORAGE REGULATIONS

Subpart B—Anchorage Grounds

1. The authority citation for Part 110 Subpart B 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.

* * * * *

§ 110.224 [Amended]

2. By removing Anchorage No. 3 from Table 110.224(d)(1) in § 110.224.

3. By removing paragraph (e)(1), Anchorage No. 3, from § 110.224.

4. By redesignating paragraphs (e)(2) through (e)(21) as paragraphs (e)(1) through (e)(20) in § 110.224.

Dated: March 4, 1987.

John D. Costello,

Vice Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District.

[FR Doc. 87–7913 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD7 86–56]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMAMARY: At the request of Forida State Senator James A. Scott, the Coast Guard is changing the regulations governing the Oakland Park Boulevard bridge at Fort Lauderdale by extending the hours during which bridge openings are limited. This change is being made because of complaints about vehicular traffic delays. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich at (305) 536–4103.

SUPPLEMENTARY INFORMATION: On January 15, 1987, the Coast Guard published proposed rules (52 FR 1636) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated January 27, 1987. In each notice, interested persons were given until March 2, 1987, to submit comments.

Drafting Information

The drafters of these regulations are Mr. Brodie Rich, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Comments

Seven comments were received. Four commenters supported the change as proposed. Two commenters asked that restrictions on bridge openings apply throughout the year, rather than seasonally. The Coast Guard has carefully reviewed the data on highway traffic and bridge openings and we believe that year-round regulations are not justified at this time. One commenter asked that the bridge be required to open at any time for commercial vessels carrying passengers. The existing regulations for drawbridges across the Atlantic Intracoastal Waterway from St. Marys River to Miami provide that vessels in a situation where a delay would endanger life or property must be passed through bridges at any time (33 CFR 117.261(a)). We believe that this provision is sufficient to address situations where bridges must be opened immediately to provide for the safety of navigation, including

passenger vessels. The final regulation is unchanged from the proposed rule published on January 15, 1987.

Economic Assessment and Certification

These 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 has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulation exempts tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261, paragraph (ff) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

* * * * *

(ff) *Oakland Park Boulevard Bridge, mile 1060.5 at Fort Lauderdale.* The draw shall open on signal; except that from November 15 through May 15 from 7 a.m. to 10 p.m., Monday through Friday, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour, and from 10 a.m. to 10 p.m. on Saturdays, Sundays, and federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: March 26, 1987.

H.B. Thorsen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 87–7912 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL–3183–5]

North Carolina SO_2 Regulations; Clarification of Air Quality Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarification of State Implementation Plan.

SUMMARY: On December 7, 1982 (47 FR 54939), EPA approved for all but 24 sources a revision to North Carolina regulation 15 NCAC 2D.0516 which relaxed the sulfur dioxide (SO_2) limit for fuel-burning sources from 1.6 pounds per million BTU heat input (lb/mBTU) to 2.3 lb/mBTU. Some of these 24 sources are undergoing additional analysis in order for EPA to approve the relaxed limit. However, Celanese Fibers Operations, Salisbury, Rowan County, North Carolina will remain at the current EPA-approved State implementation plan (SIP) limit of 1.6 lbs/mBTU and is required to do so by State permit.

ADDRESSES: Copies of the material submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, U.S. EPA, 401 M Street SW., Washington, DC 20460

United States Environmental Protection Agency, Region IV—Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, North Carolina 27611.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Peddicord, Air Programs Branch, EPA Region IV at the above address and telephone FTS 257–2864 or commercial (404) 347–2864.

SUPPLEMENTARY INFORMATION: On December 7, 1982 (47 FR 54939), EPA approved, for all but 24 sources in the State of North Carolina, a revision to State regulation 2D.0516 which relaxed the SO_2 limit for fuel-burning sources. The original version of 2D.0516 prescribed a stepdown in SO_2 emissions for all fuel-burning sources from 2.3 lb/mBTU heat input to 1.6 lb/mBTU by July 1, 1980. Air quality dispersion modeling submitted by the State in 1982 indicated that removal of the SO_2 stepdown requirement was approvable for all but 24 sources.

EPA indicated in the December 7, 1982, **Federal Register** final rule that if future modeling could show that the relaxed SO_2 limit of 2.3 lb/mBTU was adequate to protect the NAAQS, the stepdown requirement could be eliminated for other sources as well.

Celanese Fibers Operation in Rowan County, North Carolina is now and will remain at the 1.6 lb/mBTU limit. The plant is limited by Construction/Operation Permit No. 3325R10.

This notice serves to inform the public of this source in North Carolina which will remain at 1.6 lb/mBTU. Copies of the permits and correspondence are available at the EPA Region IV Office.

Dated: March 30, 1987.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 87–7835 Filed 4–9–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400 and 482

[OMB–13–F]

Medicare and Medicaid Programs; OMB Control Numbers for Collection of Information Requirements Contained in HCFA Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule and correction notice.

SUMMARY: This final rule amends a general HCFA regulation that displays control numbers assigned by the Office of Management and Budget (OMB) to approved "collection of information" requirements contained in regulations governing the Medicare and Medicaid programs. It also serves as a correction notice to the preamble of another rule in which we stated in error that OMB approval was required for certain regulation sections.

This rule is issued in accordance with OMB regulations for controlling paperwork burdens on the public and serves as notice that the cited collections of information are approved.

EFFECTIVE DATE:

1. For revision to 42 CFR 400.310, April 10, 1987.
2. For correction to the preamble affecting Part 482, September 15, 1986.

FOR FURTHER INFORMATION CONTACT: Tom Brennan, (301) 594–8651.

SUPPLEMENTARY INFORMATION:

General Information

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), Federal agencies are required to obtain Office of Management and Budget (OMB) approval of "collection of information" requirements that are contained in any regulations published by the agencies. To implement provisions of this Act, OMB has established regulations under Part 1320 of title 5 of the Code of Federal Regulations (CFR). The OMB regulations require Federal agencies (1) to notify the public that a collection of information requirement has been approved by OMB by issuing a notice in the **Federal Register**, and (2) to display the control number assigned by OMB after approval of the requirement as part of the agency's regulatory text.

To comply with the OMB requirement that HCFA include in its regulations the OMB control numbers assigned, we have established a general regulation under 42 CFR 400.310 to display valid OMB control numbers and applicable regulation sections as a means of notifying the public that the information collection requirements have been approved (49 FR 4476). We update this regulation routinely to add the most recent OMB control numbers or to delete entries that are no longer in effect.

Provisions of These Regulations

I. New Approvals

In the preamble of final rules containing information collection requirements, we identify sections of the regulations for which we requested assignment of an OMB control number. Control numbers have been assigned for the following documents published in the **Federal Register:**

Recognition of State Reimbursement Control System (51 FR 15481), §§ 403.304, 403.306, 403.312, 405.316, 403.318 and 403.320 through 403.322.

Conditions of Participation for Hospitals (51 FR 22010), §§ 482.12, 482.22, 482.27, 482.41, 482.53, 482.56, 482.57 and 482.60 through 482.62. (Although the preamble to this rule identified a number of other sections as requiring OMB approval (§§ 482.21, 482.24 through 482.26, 482.42 and 482.51 through 482.52), OMB has determined that they do not require approval and they are not subject to requirements of 5 CFR Part 1320; see "Correction" section below.)

We also submit for OMB approval information collection requirements that we identify in existing regulations. After the approval is obtained, we publish a notice in the **Federal Register** indicating whether the action is a new approval or reapproval. (Before May 2, 1983, it was not necessary to publish OMB control numbers in agency regulations (5 CFR 1320.2); hence, occasionally an item will be identified for inclusion in our table at § 400.310 based on an OMB reapproval action.) We are adding the following reapproved items to § 400.310 based on this process:

Sections 441.255 through 441.259, Consent for sterilization by hysterectomy (51 FR 19606);

Section 405.552, Payment for anesthesiology services (51 FR 21625); and

Section 405.1725, Disaster preparedness requirements for clinics, rehabilitation agencies and public health agencies as providers of outpatient physical therapy and/or speech pathology services (51 FR 30913).

II. Redesignation of Sections

We are also revising the table at § 400.310 to delete all paragraph and subparagraph designations. When we request OMB approval, we generally request and receive approval of all recordkeeping and reporting requirements in the entire section. Listing individual paragraphs serves no useful purpose and makes the table cumbersome. In general, future notices of OMB approvals will not contain paragraph and subparagraph designations. In those exceptional instances where the regulations have been amended several times, in which OMB may have assigned different control numbers to recordkeeping requirements in the same section at different times, we give all approval numbers.

III. Technical Changes

We are revising section numbers in § 400.310 to reflect recodification of requirements that have not changed. OMB routinely assigns the same control number to the recodified sections. Consequently:

Section 405.474 is now § 412.71.
Section 405.476 is now § 412.92.
Section 405.1042 is now § 482.30.

There are a few instances in which section numbers in current § 400.310 are out of strict chronological sequence. We are making the necessary changes to rectify these oversights.

Correction

When a final rule is published before we obtain an OMB control number, we include a statement in the preamble to that rule alerting the public to sections of the rule that are subject to OMB regulations at 5 CFR Part 1320 and indicating that we will issue notice in the **Federal Register** when OMB approval is obtained. In the preamble to the final rule concerning Conditions of Participation for Hospitals, published on June 17, 1986 at 51 FR 22010, under item V.C., Paperwork Burden, on page 22039, we identified a number of sections of the regulations that contain information collection requirements. In this listing, we incorrectly included 42 CFR 482.21, 482.24 through 482.26, 482.42 and 482.51 through 482.52 as subject to OMB approval. These sections do not contain information collection requirements subject to 5 CFR Part 1320. We are correcting the preamble statement on page 22039, column 2, paragraph C, deleting the references to §§ 482.21, 482.24 through 482.26, 482.42 and 482.51 through 482.52. The correction is effective September 15, 1986, which was the effective date of the document being corrected. Although the inclusion of these sections was in error, and we are unaware that any party took or failed to take action that would be disadvantageous to them based on that error, we will consider any problem resulting from a September 15, 1986 effective date on a case by case basis.

Waiver of Proposed Rulemaking and Delay in Effective Date

This regulation and correction notice merely update our display of OMB control numbers for approved collection of information requirements contained in HCFA regulations and correct a previously published preamble. They are technical in nature. To publish either in proposed form is unnecessary and would serve no useful purpose. Therefore, we find good cause to waive notice of proposed rulemaking.

We are publishing this final rule without the usual 30-day delay in effective date. The rule is technical in nature, and it is unnecessary and would serve no useful purpose to delay the effective date beyond the date of publication. The correction notice is also technical in nature and it would serve no useful purpose to delay the effective date beyond the date the document it is correcting was published. Therefore, we find good cause to waive a delay in effective date.

Impact Analysis

As noted above, this regulation is technical in nature and merely updates the display of OMB control numbers of approved collection of information requirements contained in HCFA regulations. Therefore, the Secretary has determined that this document does not meet the criteria for a major rule as defined in section 1(b) of Executive

Order 12291. In addition, the Secretary certifies, consistent with the Regulatory Flexibility Act, that this document would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 400 is amended as follows:

PART 400—INTRODUCTION: DEFINITION

1. The authority citation for Part 400 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

2. Section 400.310 is revised to read as follows:

§ 400.310 Display of currently valid OMB control numbers.

Sections in 42 CFR that contain collections of information	Current OMB control number
403.232, 403.239–403.258	0938–0264
403.304, 403.306, 403.312, 403.316, 403.318 and 403.320–403.322	0938–0473
405.165, 405.170	0938–0454
405.262	0938–0267
405.334, 405.336	0938–0465
405.481	0938–0285
405.552	0938–0285
405.1121–405.1128, 405.1136, 405.1137	0938–0364
405.1201, 405.1202, 405.1221, 405.1223–405.1226, 405.1228, 405.1229	0938–0365
405.1315, 405.1317	0938–0368
405.1413, 405.1414, 405.1416	0938–0338
405.1627, 405.1629	0938–0308
405.1632	0938–0454
405.1716, 405.1717, 405.1720, 405.1721, 405.1722, 405.1725, 405.1736	0938–0336
405.2111–405.2114, 405.2123, 405.2134 405.2137, 405.2139	0938–0386
412.44	0938–0445
412.71	0938–0288
412.92	0938–0308
412.118	0938–0337 and 0938–0456
413.30	0938–0337
416.47	0938–0266
417.412–417.414, 417.418, 417.424, 417.426, 417.428, 417.430, 417.432, 417.436, 417.444, 417.446, 417.454, 417 460, 417.474, 417.476, 417.478, 417.480, 417.481, 417.486, 417.488, 417.492, 417.494, 417.520, 417.522, 417.532, 417.548, 417.560, 417.566, 417.568, 417.570, 417.572, 417.576, 417.586, 417.592, 417.594, 417.596–417.598, 417.604, 417.608, 417.616, 417.620, 417.624, 417.632, 417.650, 417.662, 417.690, 417.801, 417.808, 417.810	0938–0406
418.22, 418.26, 418.56, 418.58, 418.70, 418.74, 418.100	0938–0302
431.55	0938–0295
431.630	0938–0445
431.800	0938–0431
432.50	0938–0459
433.112	0990–0058 and 0938–0247
433.116	0938–0247 and 0938–0442
433.117	0990–0058 and 0938–0247
433.139	0938–0459
434.6–434.20, 434.23–434.27, 434.30, 434.32, 434.36, 434.50, 434.53, 434.55	0938–0326
441.56, 441.58, 441.60, 441.61	0938–0354
441.255–441.259	0938–0481
441.301	0938–0449
441.302	0938–0268 and 0938–0449
441.303	0938–0272 and 0938–0449
442.307, 442.308, 442.309, 442.311, 442.313, 442.314, 442.318, 442.319, 442.320	0938–0370
442.402, 442.404–442.407, 442.412, 442.413, 442.417, 442.421, 442.423–442.425, 442.427, 442.430, 442.434, 442.441, 442.443, 442.457 442.460, 442.463, 442.466, 442.468, 442.475, 442.482–442.487, 442.490, 442.292, 442.497, 442.500–442.503, 442.505, 442.506, 442.512	0938–0366
447.30	0938–0067
447.31	0938–0287
447.53	0938–0429
456.654	0938–0445
466.70, 466.72, 466.74, 466.78, 466.80, 466.94	0938–0445
473.18, 473.34, 473.36, 473.42	0938–0443
474.36, 474.38–474.40	0938–0444
476.104, 476.105, 476.116, 476.134	0938–0426
482.12, 482.22, 482.27, 482.30, 482.41, 482.53, 482.56, 482.57 and 482.60–482.62	0938–0328
488.56, 488.60, 488.64	0938–0267

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Programs; No. 13.773, Medicare Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: March 5, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 2, 1987.

S. Anthony McCann,

Assistant Secretary for Management Budget.

[FR Doc. 87–8018 Filed 4–9–87; 8:45 am]

BILLING CODE 4120–01–M

Office of the Secretary

42 CFR Parts 1001 and 1003

Medicare Program; Fraud and Abuse; Civil Monetary Penalties and Exclusions for Assistants at Cataract Surgery

AGENCY: Office of Inspector General (OIG), Office of the Secretary, HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule implements section 9307 of Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 1895(b)(16) of Pub. L. 99–514, the Tax Reform Act of 1986, by providing the imposition of civil monetary penalties (CMPs) and exclusions against physicians billing the Medicare program or program beneficiaries for services of an assistant at surgery for cataract operations where prior approval has not been granted. The purpose of these regulations is to strengthen existing OIG penalty and exclusion authorities, and to prevent specific abusive and fraudulent practices against the Medicare program with regard to the use of assistants at surgery where not medically necessary.

DATES: *Effective Date:* These regulations are effective on April 10, 1987.

Comment period: Although these regulations are final we will consider comments on these regulatory revisions received by June 9, 1987. To assure consideration, comments must be mailed and delivered to the appropriate address, as provided below, and must be received by 5:00 p.m.

ADDRESS: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–8–FC, Room 5246, 330 Independence Avenue, SW., Washington, DC 20201.

If you prefer you may deliver your comments to Room 5643, 300 Independence Avenue, SW., Washington, DC. In commenting, please refer to file code LRR–8–FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection beginning approximately two week after publication in Room 5643, 330 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m. (202) 472–5270.

FOR FURTHER INFORMATION CONTACT: Clarke Bowie, Office of Investigations, (301) 594–1827.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to the passage of Pub. L. 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Medicare program generally provided coverage for services performed by assistants at surgery during routine cataract operations. The Health Care Financing Administration (HCFA) permitted Medicare Part B carriers to make specific determinations as to whether or not services of an assistant at surgery during cataract surgery were medically necessary. For the most part, each Medicare carrier has made these determinations as to the use of assistants at surgery based on the generally accepted practice among ophthalmologists in the geographic area it services.

Findings contained in two reports issued by the HHS Office of Inspector

General—*Review of Medicare Payments for Assistant Surgeon Services During Cataract Surgery* (No. 01–52001, June 1985) and *Medicare Cataract Implant Surgery* (No. OAI–85–IX–046, March 1986)—specifically indicated that the use of an assistant at surgery during routine cataract surgery did not appear medically necessary in most situations. In addition, these studies found that such assistance during a cataract operation was often being provided by a surgical technician or by an operating room nurse. The studies further cited as evidence the practices of many primary ophthalmic surgeons who do not use assistants at surgery.

Section 9307 of Pub. L. 99–272

Section 9307 of Pub. L. 99–272 specifically amended section 1154(a)(8) and added a new section 1862(a)(15) to the Social Security Act by denying Medicare payment for services of an assistant at surgery during cataract operations. Under this provision, an assistant at surgery is prohibited from billing the Medicare program or the program beneficiary for charges for services that have not received prior approval from the local Peer Review Organization (PRO) or the Medicare Part B carrier. In addition, the primary surgeon under this provision is prohibited from including such charges for services performed by an assistant at surgery in his or her bill. To enforce this provision and to protect program beneficiaries from out-of-pocket costs, section 1842(k) (1) and (2) of the Act has also been added to give the Secretary specific authority to impose the same penalty provisions that apply to section 1842(j) of the Act for violations of the physician fee freeze.

Referral of Violations to the OIG

The responsibility for making determinations of civil monetary penalties (CMPs) and exclusions under this provision will rest with the OIG. HCFA will refer all cases for possible sanction and CMP action to the OIG for a determination under the OIG's present sanction and CMP authorities. Program instructions issued by HCFA (Medicare Peer Review Organization Manual, Transmittal No. 12) specifically establish set procedures by which the primary surgeon may request prior approval from the PRO for the use of an assistant at surgery when complicating medical conditions exist. The development and implementation of these procedures and case referrals remain the specific responsibility of HCFA and are not contained as part of this rulemaking.

Use of an Assistant at Surgery Where Neither the Program Nor the Beneficiary is Billed

As long as there is no request for payment made to either the Medicare program *or* the program beneficiary, the statute does not specifically preclude the use of an assistant at cataract surgery. While there may be some concern that the mere use of an assistant at cataract surgery during such procedures may impact on, and be included in, the primary surgeon's fee, we believe that any potential adverse effects from this circumvention should be effectively precluded by the special charge limitations established on physicians' fees for cataract surgery under section 9334 of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986.

II. Provisions of the Regulations

Under these regulations, if (1) a physician knowingly and willfully bills for charges for services performed as an assistant at surgery during a routine cataract operation, or has charges for such services billed for him or her by the primary surgeon as part of that primary physician's bill, and (2) prior approval from the appropriate PRO or carrier for the use of such an assistant has not been obtained, the OIG may (a) bar the physician, or physicians, from participation in the Medicare program for a period not to exceed 5 years, in accordance with section 1862(d)(2) and (3) of the Act, and (b) impose civil monetary penalties in the same manner as such penalties authorized under section 1128A(a) of the Act. [Section 1895(b)(16) of Pub. L. 99–514, the Tax Reform Act of 1986, specifically provides that for surgical procedures performed during the period April 1, 1986 to December 15, 1986, a carrier will be deemed to have approved the use of an assistant at surgery before the surgery was performed if the carrier determined, after the operation, that the use of such an assistant was appropriate based on a complicating medical condition before or during the surgery.] Specifically, these regulations:

- Include a new 42 CFR 1002.104 stating that the OIG will utilize existing procedures contained in the current regulatory provisions pertaining to fraud and abuse determinations when determining the length of an exclusion and the amount of monetary penalty and assessment applicable to physicians who are to be sanctioned. The notification, effectuation and appeal procedures under existing regulations will also be used for violations of the assistant at cataract surgery provision.
- Specify that exclusions from the Medicare program based on violations of the assistant at cataract surgery provision will be for a period not exceeding 5 years. Any physician excluded under this provision will not be automatically reinstated into Medicare program participation until an application for reinstatement is made and approved by the OIG.
- Provide that if an exclusion is for the full 5 years, the OIG will have to automatically approve an application for reinstatement. If the physician was also excluded for a longer period of time under another sanction provision, the 5 year maximum exclusion period will not be applicable.
- Modify existing regulations at 42 CFR 1003.102 to include violations of billing for charges for services as or for an assistant at cataract surgery as a basis for imposing penalties.

III. Waiver of Proposed Rulemaking

In enacting section 9037 of Pub. L. 99–272, Congress set forth a clear approach for addressing situations involving the billing for the services of an assistant at surgery during cataract operations. Since that aspect of the law dealing with the penalty provisions for such violations is explicit in its requirements, with virtually no room for policy discretion on our part, we believe it is impractical and unnecessary in this instance to publish a notice of proposed rulemaking and request public comments before issuing final regulations. While we are waiving proposed rulemaking procedures as noted in the summary, we are providing for a comment period so that interested parties may raise comments or suggestions.

Because of the number of comments we receive, we cannot acknowledge or respond to them individually. However, if we publish changes in a revised final rule as a result of the comment period, we will respond to the comments received in the preamble of that document.

IV. Impact Analysis

Executive Order 12291

We have determined that these regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. Under those criteria, a rule is classified as major if it would have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry or a geographic region; or cause significant adverse effects on business

or employment. As this rule is expected to have an annual impact of $100 million or less, no impact analysis is required.

Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980, Pub. L. 96–354, U.S.C. 604(a), we prepare a regulatory flexibility analysis when the agency issues certain regulations that would have a significant economic impact on a substantial number of small businesses. The analysis is intended to explain what effect the regulatory action by the agency has on small businesses and other small entities, and to develop lower cost or burden alternatives. The law on which these regulations are based is specific in nature, and there is little leeway in implementing the requirements. While some of the sanctions that the Federal Government will impose as a result of these regulations will have an impact on physicians, we do not anticipate that a substantial number of physicians will be significantly affected by these regulations. Therefore, the Secretary certifies that a regulatory flexibility analysis is not required for this rulemaking.

List of Subjects

42 CFR Part 1001

Abuse, Administrative practice and procedures, Cancer hospitals, Christian Science sanitoria, Clinics, Contracts (agreements), Conviction, Convicted, Courts, Discharges and transfers, Exclusion, Fraud, Health care, Health facilities, Health maintenance organizations, Health professions, Health suppliers, Information (disclosure), Inpatient hospital services, Lawyers, Medicaid, Medicare, Outlier cases, Penalties, Prospective payment, Provider agreements, Referral centers, Renal transplantation centers, Reporting and recordkeeping requirements, Rural health clinics, Supervision, Sole community hospitals, Termination procedures, Utilization and quality control Peer Review Organizations.

42 CFR Part 1003

Administrative practice and procedures, Archives and records, Grant programs—social programs, Maternal and Child Health, Medicaid, Medicare, Penalties.

TITLE 42—PUBLIC HEALTH

A. 42 CFR Chapter V, Part 1001 is amended as set forth below:

PART 1001—PROGRAM INTEGRITY—MEDICARE

1. The authority citation for Part 1001 is revised to read as follows:

Authority: Secs. 1102, 1128, 1842(j), 1842(k), 1862(d), 1862(e), 1866(b)(2)(D), (E) and (F), and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh), unless otherwise noted.

2. The Table of Contents for Subpart B is amended by adding an entry for § 1001.104.

Subpart B—Suspension, Exclusion or Termination of Practitioners, Providers, Suppliers of Services and Other Individuals

* * * * *

Sec.

1001.104 Sanctions and exclusion for the billing for charges of services by or as an assistant at surgery during cataract operations.

* * * * *

3. In Subpart B, § 1001.100 is revised to read as follows:

§ 1001.100 Basis and scope.

This subpart implements sections 1128, 1842(j), 1842(k) and 1862(d) and (e) of the Act. It sets forth criteria and procedures for—

(a) Excluding (1) practitioners, providers, and suppliers of services who have defrauded or abused the Medicare program, (2) Physicians who have violated the billing restrictions of section 1842(k) of the Act by billing for services performed by, or as, an assistant at cataract surgery, or (3) For those physician practitioners who are not participating physicians, who have violated the billing restrictions of section 1842(j) of the Act, and

(b) For suspending practitioners and other individuals convicted of crimes related to their participation in the delivery of medical care or services under the Medicare, Medicaid or the social services programs.

* * * * *

4. Subpart B is amended by adding a new § 1001.104 to read as follows:

§ 1001.104 Sanctions and exclusion for the billing for charges of services by or as an assistant at surgery during cataract operations.

(a) Whenever the OIG determines that—

(1) A physician knowingly and willfully bills for charges of services as an assistant at surgery during a routine cataract operation, or includes in his or her bill the services of an assistant at surgery during a routine cataract operation, and

(2) Prior approval for use of such an assistant has not been obtained from the appropriate Peer Review Organization or Medicare carrier, the OIG may exclude either one or both physicians from program participation for a period of up to five years, impose a civil monetary penalty against the physician (or physicians), or both. [For cataract operations performed during the period April 1, 1986 to December 15, 1986, a carrier will be deemed to have approved the use of an assistant at surgery before the surgery was performed if the carrier determined, after the operation, that the use of such an assistant was appropriate based on a complicating medical condition before or during the surgery.]

(b) If the OIG makes a determination under paragraph (a) of this section that involves a civil monetary penalty, the OIG will use the penalty determination, notification, effectuation, and appeal procedures contained in §§ 1003.100 through 1003.130 of this chapter.

(c)(1) If the OIG makes a determination under paragraph (a) of this section and proposes to exclude a physician, or physicians, from Medicare program participation without imposing a civil monetary penalty, the OIG will use the determination, notification, effectuation, appeal, and reinstatement procedures contained in §§ 1001.100 through 1001.115 and §§ 1001.130 through 1001.134.

(2) In excluding a physician, or physicians, under paragraph (a) of this section, the exclusion period determined under § 1001.114 may not exceed five years.

5. In Subpart B, § 1001.134 is amended by revising paragraph (d) to read as follows:

§ 1001.134 Notice of action on request for reinstatement.

* * * * *

(d) The OIG must automatically reinstate a physician excluded exclusively on the basis of §1001.102 or § 1001.104 if that exclusion has been in affect for five years.

B. 42 CFR Chapter V, Part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for Part 1003 is revised to read as follows:

Authority: Secs. 1102, 1128, 1128A, 1842(j) and 1842(k) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a, 1395u(j) and 1395u(k)).

2. In § 1003.100, paragraph (a) is revised to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1842(j), and 1842(k) of the Social Security Act (42 U.S.C. 1320a–7(c), 1320a–7a, 1395u(j), and 1395u(k)).

* * * * *

3. Section 1003.102 is amended by revising paragraph (b) introductory text and adding paragraph (b)(3) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty against any person whom it determines in accordance with this part:

* * * * *

(3) Is a physician who has knowingly and willfully—

(i) Billed for services as an assistant at surgery during a routine cataract operation, or

(ii) Included in his or her bill the services of an assistant at surgery during a routine cataract operation; and has not received prior approval from the appropriate Peer Review Organization or Medicare carrier for such services based on the existence of a complicating medical condition.

* * * * *

(Catalog of Federal Domestic Assistance Programs, No. 13.744, Medicare—Supplementary Medical Insurance Program)

Dated: February 18, 1987.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: March 5, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–7746 Filed 4–9–87; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 87–59]

Procedural Rules; Implementation of Amendments to Equal Access to Justice Act Amendments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC has adopted rule amendments to implement changes to the Equal Access to Justice Act (EAJA). The EAJA provides for the award of attorney's fees to qualified parties who prevail over the Government in certain administrative proceedings. The EAJA requires each government agency to establish uniform procedures for implementing the Act.

The amended rules provide instruction to eligible parties who seek to recover attorney's fees from the Commission, consistent with recent amendments to the EAJA enacted by Congress.

EFFECTIVE DATE: February 5, 1987.

FOR FURTHER INFORMATION CONTACT: James B. Mullins, Office of General Counsel, Federal Communications Commission, Washington, DC 20554, (202) 254–6530.

SUPPLEMENTARY INFORMATION:

Federal Communications Commission

Order

Adopted: February 5, 1987.
Released: March 3, 1987.

By the Commission.

In the matter of Equal Access to Justice Act Rules, FCC 87–59.

1. The rules set forth herein are designed to implement amendments to the Equal Access to Justice Act (EAJA), Pub. L. 99–80, 99 Stat. 183, 5 U.S.C. 504. The EAJA provides for the award of attorney's fees and other expenses to qualified parties who prevail over the Federal Government in certain administrative and court proceedings. The EAJA requires that each agency establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. The EAJA, which had expired on September 30, 1984, was reauthorized by Pub. L. 99–80, which made several substantial changes to the EAJA. These rules reflect those changes and largely follow the model rules recommended by the Administrative Conference of the United States. *See* 51 FR 16659 (May 6, 1986).

2. In reauthorizing the EAJA, Congress made the following amendments relevant to the Commission:

1. The Act is applicable to any case commenced after October 1, 1984.

2. Net worth ceilings for eligible parties have been raised to $2,000,000 for individuals and $7,000,000 for partnerships, corporations and certain other entities.

3. Units of local government that fall under the ceilings of net worth and number of employees have been made eligible for fee awards.

4. The position of the agency that must be substantially justified has been specifically defined to include the underlying action or failure to act on which the relevant proceeding is based as well as the agency's position in litigation.

5. Whether or not the position of the agency was substantially justified is to be determined based on the administrative record of the proceeding as a whole adduced during the course of the adjudication for which fees and other expenses are sought.

3. We find that prior notice and comment procedures are unnecessary to implement the rule amendments because the revisions involve general rules of agency organization, practice or procedure. *See* 5 U.S.C. 553(b)(3)(A). Pursuant to § 1.427(b) of the Commission's Rules the rule amendments are effective February 5, 1987. See 47 CFR 1.427(b).

4. The rules are issued pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r); and the Equal Access to Justice Act, Pub. L. 99–80, 5 U.S.C. 504(c)(1).

5. In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), we hereby certify that these rules will not have a significant economic impact upon a substantial number of small entities. The EAJA itself may have an impact since it applies to individuals and small business entities. It represents a congressional determination that small entities should not bear the burden of litigation where the Government's position is not substantially justified. The rules simply implement the EAJA, carrying out congressional intention, and do not, by themselves, impose significant economic burdens or benefits. This certification shall be provided to the Chief Counsel for Advocacy of the Small Business Administration.

The officials responsible for this action are the following Commissioners: Mark S. Fowler, Chairman, James H. Quello, Mimi Weyforth Dawson, Dennis R. Patrick, Patricia Diaz Dennis.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 1—PRACTICE AND PROCEDURE

Chapter I of Title 47 of the Code of Federal Regulations is hereby amended as follows:

1. The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.1502 is revised to read as follows:

§ 1.1502 When the EAJA applies.

The EAJA applies to any adversary adjudication pending or commenced before the Commission on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in Subpart B of these rules, had been filed with the Commission within 30 days after August 5, 1985.

3. Section 1.1503 is amended by revising paragraph (a) to read as follows:

§ 1.1503 Proceedings covered.

(a) The EAJA applies to adversary adjudications conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Any proceeding in which this Agency may fix a lawful present or future rate is not covered by the EAJA. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications."

* * * * *

4. Section 1.1504 is amended by revising paragraphs (b)(1), (b)(2), (b)(5), (c) and (f) to read as follows:

§ 1.1504 Eligibility of applicants.

* * * * *

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

* * * * *

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

* * * * *

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the Administrative Law Judge determines that such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, the Administrative Law Judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

* * * * *

5. Section 1.1505 is amended by revising paragraph (a) to read as follows:

§ 1.1505 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection either with a proceeding, or with a significant and discrete substantive portion of a proceeding, unless the Administrative Law Judge determines that the position of the Commission over which the applicant has prevailed was substantially justified. The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on the appropriate Bureau (see § 1.21 of this chapter) whose representative shall be called "Bureau counsel" in this subpart. To avoid an award a Bureau must demonstrate that its position was substantially justified in law and fact or that special circumstances make an award unjust.

* * * * *

6. Section 1.1511 is amended by revising paragraph (b) to read as follows:

§ 1.1511 Contents of application.

* * * * *

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

* * * * *

7. Section 1.1526 is amended by revising paragraph (a) to read as follows:

§ 1.1526 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Bureau counsel, or on his or her own initiative, the Administrative Law Judge may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification, an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

* * * * *

[FR Doc. 87-7886 Filed 4-9-87; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

Oversight of Radio and TV Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends broadcast regulations in 47 CFR Part 73. Amendments are made to correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: April 10, 1987.

ADDRESS: Federal Communications Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Mass Media Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION: In this Order, modifications are made to update, delete, clarify or correct regulations in Title 47, Code of Federal Regulations. Adopted March 19, 1987 and released March 27, 1987.

Federal Communications Commission

Order

Adopted: March 19, 1987.
Released: March 27, 1987.

By the Chief, Mass Media Bureau.

In the matter of oversight of the radio and TV broadcast rules.

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) In BC Docket 82–187 the Commission adopted a series of amendments to the technical rules to reflect changes in international agreements. (*See Report and Order*, 49 FR 32357, August 14, 1984).

One of the modifications was the removal of paragraph (d) in § 73.28, Assignment of stations to channels.

There remains a cross reference to this eliminated paragraph in the Note following paragraph (b) in § 73.24, Broadcast facilities, showing required.

The Note is amended herein to correct this inaccurate reference. (See amendment 2.)

(b) The following corrections are made in § 73.182, Engineering standards of allocation:

(i) The opening sentences of paragraph (d) is missing part of the rule's text pertaining to primary, secondary and intermittent service areas; it is restored here.

(ii) A cross reference in paragraph (d) to § 73.11 is corrected to read § 73.14;

(iii) Two cross references to paragraph (v), as stated in paragraph (m), are corrected to cross reference paragraph (s); and

(iv) The costs reference to paragraph (w), found in footnote 2 to the Table in paragraph (s), is revised to read paragraph (t). (See amendment 3.)

(c) A typographical error exists in subparagraph (d)(1) of § 73.313, Prediction of coverage. It is corrected so the affected sentence correctly states "At least *one* (emphasis added) radial must include . . . ." (See amendment 4.)

(d) The Metric Conversion Act of 1975 directed conversion of measurement units in the Federal rules and regulations to the international system of units—the metric system. The Commission has carried out this mandate in a series of proceedings. One of these was the Order adopted May 17, 1985 (*See Order, Radio and TV Broadcasting; Metrication of Rules*, 50 FR 23697, June 5, 1985).

In that Order, an amendment was made in § 73.611, Reference points and distance computations, that revised the text of paragraph (d) by directing the rule user to ". . . see paragraph (c) of § 73.208" for pertinent distance calculations.

Unintentionally, the rule was drafted in such a way that the amended paragraph (d) was retained as the sole text of the rule, and the balance, paragraphs (a), (b) and (c), was removed. This mistake is corrected here by reinstating paragraphs (a), (b) and (c) and designating the current text as paragraph (d), as was originally conceived. (See amendment 5.)

(e) Note 9 of Figure 6 in § 73.699, TV engineering charts, uses the archaic terms "me" (megacycles) and "cycles per second". Corrections are made here to contemporize the terms to MHz (megahertz) and Hz (Hertz). (See amendment 6.)

(f) The specifications for the maximum amount of time the FCC allows to construct broadcast and auxiliary stations is stated in § 73.3598. The types of stations are divided into two groups, TV stations in paragraph (a) and other broadcast, auxiliary and ITF stations in paragraph (b). There are distinct headings for each type station, which should be printed in italics but are not. A change to italics is made by this Order. (See amendment 7).

(g) Amendments are made to the listing of certain FCC policies as follows:

(i) Public notice was given in the **Federal Register** on July 18, 1986 providing additional clarification of the procedures adopted in BC Docket 80–90 (Modification of FM broadcast station rules to increase the availability of commercial FM broadcast assignments. 48 FR 29486, June 27, 1983). The **Federal Register** citation for this Public Notice is added as paragraph (d) to § 73.4107, which is the policy listing pertaining to this subject.

(ii) A new policy listing is added herein pertaining to transmitter site map submissions required by FCC Forms 301 and 340. The citation is the Memorandum Opinion and Order and Public Notice adopted on October 24, 1986 and will be designated § 73.4108, FM transmitter site map submissions.

(iii) Section 73.4140, Minority ownership, will have an additional citation added to the three currently stated therein. It is the Report and Order in Docket 82–797 adopted December 21, 1984. Also, the citation to "General Docket 82–297" in paragraph (c) of this policy listing is revised to correctly read General Docket 82–797. (See amendments 8, 9, and 10).

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

4. Since a general notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply.

5. Accordingly, *It Is Ordered*, That pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and § 0.61 and 0.283 of the Commission's Rules, Parts 73 of the FCC Rules and Regulations *Is Amended* as set forth, effective on the date of publication in the **Federal Register**.

6. For further information on this *Order*, contact Steve Crane, (202) 632–5414, Mass Media Bureau.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

47 CFR Part 73 is amended as follows:

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

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

2. Section 73.24 is amended by revising the Note following paragraph (b) to read as follows:

§ 73.24 Broadcast facilities; showing required.

* * * * *

(b) * * *

Note.—With respect to new Class II–A stations or to stations for which applications were accepted for filing before July 13, 1964, the provisions of **Note** 1 of § 73.37 of this chapter shall apply. Special provisions concerning interference from Class II–A to stations of other classes authorized after October 30, 1961, are contained in § 73.22(d) of this chapter and **Note** 3 to § 73.21 of this chapter. The level of interference shall be

computed pursuant to §§ 73.182 and 73.186 of this chapter.

* * * * *

3. Section 73.182 is amended by revising footnote 2 to the Table in paragraph (s) and by revising paragraphs (d) and (m) to read as follows:

§ 73.182 Engineering standards of allocation.

* * * * *

(d) The several classes of AM broadcast stations have in general three service areas, i.e., primary, secondary and intermittent service areas. (See § 73.14 for the definitions of primary, secondary and intermittent service areas.) Class I stations render service to all three areas. Class II stations render service to a primary area but the secondary and intermittent service areas may be materially limited or destroyed due to interference from other stations, depending on the station assignments involved. Class III and IV stations usually have only primary service areas, as interference from other stations generally prevents any secondary service and may limit the intermittent service area. However, complete intermittent service may be obtained in many cases depending on the station assignments involved.

* * * * *

(m) Objectionable interference from a station on the same channel shall be considered to exist to a station when, at the field strength contour specified in paragraph (s) of this section with respect to the class to which the station belongs, the field strength of an interfering station (or the root-sum-square value of the field strengths of two or more interfering stations) operating on the same channel, exceeds for ten (10) percent or more of the time the value of the permissible interfering signal set forth opposite such class in paragraph (s) or this section.

* * * * *

(s) * * *

"[2] For adjacent channel, see paragraph (t) of the section.";

* * * * *

4. Section 73.313 is amended by revising paragraph (d)(1) to read as follows:

§ 73.313 Prediction of coverage.

* * * * *

(d) * * *

(1) Profile graphs must be drawn for eight radials beginning at the antenna site and extending 16 kilometers therefrom. The radials should be drawn for each 45° of azimuth starting with True North. At least one radial must include the principal community to be served even though it may be more than 16 kilometers from the antenna site. However, in the event none of the evenly spaced radials include the principal community to be served, and one or more such radials are drawn in addition, these radials must not be used in computing the antenna height above average terrain.

* * * * *

5. Section 73.611 is revised to read as follows:

§ 73.611 Reference points and distance computations.

(a) In considering petitions to amend the Table of Allotments (§ 73.606(b)), the following reference points shall be used by the Commission in determining assignment separations between communities:

(1) Where transmitter sites for the pertinent channels have been authorized in communities involved in a petition to amend the Table of Allotments, separations between such communities shall be determined by the distance between the coordinates of the authorized transmitter sites in the respective communities as set forth in the Commission's authorizations therefor.

(2) Where an authorized transmitter site is available for use as a reference point in one community but not in the other for the pertinent channels, separations shall be determined by the distance between the coordinates of the transmitter site as set forth in the FCC's authorization therefor and the coordinates of the other community as set forth in the publication of the United States Department of the Interior entitled, Index to *The National Atlas of the United States of America.* If this publication does not contain the coordinates for said other community, the coordinates of the main post office thereof shall be used.

(3) Where no authorized transmitter sites are available for use as reference points in both communities for the pertinent channels, the distance between the two communities listed in the above publication shall be used. If said publication does not contain such distance, the separation between the two communities shall be determined by the distance between the coordinates thereof as set forth in the publication. Where such coordinates are not contained in the publication, the coordinates of the main post offices of said communities shall be used.

(4) Where the distance between the reference point in a community to which a channel is proposed to be assigned and the reference point in another community or communities does not meet the minimum separation requirements of § 73.610, the channel may be assigned to such community upon a showing that a transmitter site is available that would meet the minimum separation requirements of § 73.610 and the minimum field strength requirements of § 73.685. In such cases, where a station is not authorized in the community or communities to which measurements from the proposed channel assignment must be made pursuant to § 73.610 a showing should also be made that the distance between suitable transmitter sites in such other community or communities and the proposed transmitter site for the new channel meet the Commission's minimum spacing and coverage requirements.

(b) Station separations in licensing proceedings shall be determined by the distance between the coordinates of the proposed transmitter site in one community and

(1) The coordinates of an authorized transmitter site for the pertinent channel in the other community; or, where such transmitter site is not available for use as a reference point,

(2) The coordinates of the other community as set forth in the Index to *The National Atlas of the United States of America;* or if not contained therein,

(3) The coordinates of the main post office of such other community.

(4) In addition, where there are pending applications in other communities which, if granted, would have to be considered in determining station separations, the coordinates of the transmitter sites proposed in such applications must be used to determine whether the requirements with respect to minimum separations between the proposed stations in the respective cities have been met.

(c) In measuring assignment and station separations involving cities listed in the Table in combination, where there is no authorized transmitter site in any of the combination cities on the channel involved, separation measurements shall be made from the reference point which will result in the lowest separation.

(d) To calculate the distance between two reference points see paragraph (c), § 73.208. However, distances shall be rounded to the nearest tenth of a kilometer.

6. Section 73.699 is amended by revising Note 9 of Figure 6 to read as follows:

§ 73.699 TV engineering charts.

* * * * *

Figure 6 * * *

Notes

* * * * *

(9) The burst frequency shall be 3.579545 MHz. The tolerance on the frequency shall be ±10 Hz with a maximum rate of change of frequency not to exceed 1/10 Hz per second.

* * * * *

7. Section 73.3598 is amended by italicizing the introductory headings of paragraphs (a) and (b). As revised, the headings to paragraphs (a) and (b) read as follows:

§ 73.3598 Period of construction.

(a) *TV broadcast stations.* * * *

(b) *Other broadcast, auxiliary and Instructional TV Fixed Stations.* * * *

8. Section 73.4107 is amended by adding new paragraph (d) to read as follows:

§ 73.4107 FM broadcast assignments, increasing availability of.

* * * * *

(d) See Public Notice, 51 FR 26009, July 18, 1986.

9. Section 73.4108 is added to the Listing of FCC policies to read as follows:

§ 73.4108 FM transmitter site map submissions.

See Memorandum Opinion and Order and Public Notice, adopted October 24, 1986. 1 FCC Rcd 381 (1986); 51 FR 45945, December 23, 1986.

10. Section 73.4140 is amended by revising paragraph (c); by correcting the spelling of the term Minority in the section title; and by adding new paragraph (d) to read as follows:

§ 73.4140 Minority ownership; tax certificates and distress sales.

* * * * *

(c) See Policy Statement, General Docket 82-797, FCC 82-523, adopted December 2, 1982. 92 FCC 2d 849; 48 FR 5943, February 9, 1983.

(d) See Report and Order, General Docket 82-797, FCC 84-647, adopted December 21, 1984. 99 FCC 2d 1249; 50 FR 1239, January 10, 1985.

[FR Doc. 87-7888 Filed 4-9-87; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 52, No. 69
Friday, April 10, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 353

Restoration to Duty From Military Service or Compensable Injury

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations governing the restoration rights of employees who perform military duty or are injured on the job. This revision is being proposed together with a comprehensive revision of Chapter 353 of the Federal Personnel Manual (FPM). The principal purpose of the revision is to update, simplify, and clarify the regulations and instructions. A copy of FPM Chapter 353, which contains specific policies, advice, and guidance to agencies amplifying these regulations, is available upon request from the contact office shown below.

DATE: Comments must be submitted on or before June 9, 1987.

ADDRESS: Send or deliver comments to Donald L. Holum, Chief, Staffing Policy Analysis Division, Career Entry Group, Office of Personnel Management, Room 6504, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Raleigh M. Neville, (202) 632-6817.

SUPPLEMENTARY INFORMATION: Part 353 provides restoration rights to exployees who perform military duty or sustain compensable injuries or illnesses. These rights are based on 38 U.S.C. 2021 *et seq.* and 5 U.S.C. 8151, respectively, both of which were enacted 11 years ago. The implementing regulations have not been substantively amended since that time. OPM has closely monitored the application and interpretation of the regulations and corresponding FPM provisions and has determined they are in need of a thorough revision to delete obsolete provisions; reflect changes in law, Merit Systems Protection Board (MSPB) and court decisions; clarify certain concepts; and put the material into a more useful format. The following are among the more important changes being proposed:

—Revises § 353.102 to clarify that restoration rights following compensable injury apply only to Federal employees. Also, adds a definition of "equivalent position" and includes "furlough" in the definition of "leave of absence."

—Deletes material in §§ 353.104 and 353.105 pertaining to how employees on military duty or injury compensation are to be carried. (This information is covered in more detail in FPM Chapter 353.)

—Revises § 353.106 pertaining to notification of rights and obligations to make clear that an employee has an obligation to use due diligence in ascertaining his or her rights, and to return to duty as soon as he or she is able.

—Revises § 353.201(b) to provide that an employee whose position is reclassified during his or her absence is entitled to be considered for the regraded position in accordance with the provisions of Part 335 of this chapter.

—Revises § 353.201(c) to clarify that the prohibition on demoting or separating an employee absent on military duty applies only when the individual has restoration rights under Title 38 of the U.S. Code.

—Revises § 353.203 to clarify that OPM will provide placement assistant to an employee returning from military duty when it is not feasible for the employing agency to restore the individual.

—Revises § 353.302 to change the focus from the time limits to who is entitled to mandatory restoration.

—Deletes material in § 353.303 pertaining to the position to which restored to reflect the provisions of 38 U.S.C. 2021(a)(A)(i) and the expiration of the so-called Whitten Amendment that effectively removed the requirement to obligate the position of an employee entering military service.

—Deletes material in § 353.305 pertaining to conflicting restoration rights, since conflicting restoration rights should rarely be an issue. (These rights are discussed in FPM Chapter 353.)

—Deletes most of the material in § 353.308 on notice of appeal rights. The right to appeal is covered in the new § 353.104.

—Adds a new § 353.306 specifying that Reservists are entitled to a leave of absence to perform military duty.

—Revises § 353.401 to remove repetitive and unnecessary material and to clarify that employees of the legislative and judicial branches do not have appeal rights to the MSPB. Also provides a limited right for partially recovered employees to appeal an agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

—Transfers material in Subpart E on the restoration rights of TAPER (temporary appointments pending establishment of a register) employees to § 353.305.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to internal Federal personnel matters.

List of Subjects in 5 CFR Part 353

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM proposes to amend Part 353 of Title 5, Code of Federal Regulations, as follows:

1. The authority citation for Part 353 is revised to read as follows:

Authority: 38 U.S.C. 2021 *et seq.*, and 5 U.S.C. 8151.

2. The heading for Part 353 is revised to read as follows:

PART 353—RESTORATION TO DUTY FROM MILITARY SERVICE OR COMPENSABLE INJURY

3. Section 353.101 is revised to read as follows:

§ 353.101 Scope

The rights and obligations of employees and agenices in connection with leaves of absence or restoration to duty following military service under 38

U.S.C. 2021, *et seq.*, and restoration under 5 U.S.C. 8151 for employees who sustain compensable injuries, are subject to the provisions of this part and to corresponding material published in Chapter 353 of the Federal Personnel Manual.

4. Section 353.102 is amended by removing the paragraph designations and alphabatizing the definitions the defention revising the definitions of "Agency," "Leave of absence," and "Military duty," and adding the definition of "Equivalent position" to read as follows:

§ 353.102 Definitions.

* * * * *

"Agency" means (1) with respect to restoration following a compensable injury, any department, independent establishment, agency, or corporation in the executive branch, including the U.S. Postal Service and the Postal Rate Commission, and any agency in the legislative or judicial branch; and (2) with respect to restoration following military duty, all of the foregoing except for any agency in the legislative or judicial branch, but including the Government of the District of Columbia.

"Equivalent position" means a position at the same grade and pay with the same senority and civil service status. Other factors such as promotion potential of the position, supervisory responsibilities, duties of the position, or placement within an organizational structure are not relevant.

* * * * *

"Leave of absence" means military leave, annual leave, leave without pay (LWOP), furlough, continuation of pay, or any combination of these.

"Military duty" means a period of (1) active duty for training or for service in the Armed Forces of the United States; (2) inactive duty training in the Armed Forces of the United States; and (3) active duty in the Public Health Service that is covered by 37 U.S.C. 2024(b). For the purpose of this paragraph, full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 502, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States. Inactive duty training performed by a member of the National Guard under 32 U.S.C. 502 or 36 U.S.C. 206, 301, 309, 402, or 1002 is considered inactive duty training in the Armed Forces of the United States.

5. In § 353.103, paragraph (c) is redesignated as paragraph (b), and the original paragraph (b) is redesignated as paragraph (c). Both paragraphs are revised to read as follows:

§ 353.103 Persons covered.

* * * * *

(b) The provisions of this part concerning employee injury cover a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States, who was separated or furloughed from an appointment without time limitation as a result of a compensable injury; but do not include—

(1) A commissioned officer of the Regular Corps of the Public Health Service;

(2) A commissioned officer of the Reserve Corps of the Public Health Service on active duty; or

(3) A commissioned officer of the National Oceanic and Atmospheric Administration.

(c) Section 353.305 covers the restoration rights of employees serving under temporary appointment pending establishment of register (TAPER).

§§ 353.104 and 353.105 [Removed]

6. Sections 353.104 and 353.105 are removed.

7. Section 353.106 is redesignated as §353.104 and revised to read as follows:

§ 353.104 Rights and obligations.

When an agency separates, furloughs, places on leave of absence, restores or fails to restore an employee because of military duty or compensable injury, it shall notify the employee of his or her rights, obligations, and benefits relating to Government employment, including any appeal rights to the Merit Systems Protection Board (MSPB) as required by § 1201.21 of this title. However, this does not relieve an employee of the obligation to exercise due diligence in ascertaining his or her rights, or to seek reemployment within the time limits provided by chapter 43 of Title 38 of the U.S. Code, for reemployment after military service or as soon as he or she is able after a compensable injury.

§ 353.107 [Redesignated as § 353.105]

8. Section 353.107 is redesignated as § 353.105.

9. Section 353.201 is revised to read as follows:

§ 353.201 Personnel actions.

(a) Agency promotion plans must provide a mechanism by which employees who are absent because of compensable injury or military duty can be considered for promotion.

(b) An employee whose position is reclassified while he or she is absent because of injury or military duty shall be considered for that position in accordance with the provisions in Part 335 of this chapter.

(c) An employee with restoration rights, absent on military duty, may not be demoted or separated (other than military separation). If the employee's position is abolished during such absence, the agency must reassign the employee to another position of like seniority, status, and pay.

(d) An employee absent because of compensable injury is subject to the same terms and conditions of employment with respect to demotion, separation, reduction in force (RIF), etc., as though he or she had not been injured. An employee who receives compensation during a period of LWOP or separation not due to compensable injury (e.g., expiration of appointment or RIF) or during a period when he or she would not normally be expected to work (e.g., seasonal employment) is not entitled to any greater rights or benefits than he or she would have received if not entitled to workers' compensation.

10. Section 353.203 is revised to read as follows:

§ 353.203 OPM placement assistance.

OPM will provide placement assistance to employees returning from military duty or compensable injury when the employing agency has been abolished and its functions were not transferred to another agency. Upon request, OPM will also provide placement assistance to an employee returning from military duty when it is not feasible for the employing agency to restore the individual.

§ 353.301 [Removed]

11. Section 353.301 is removed.

12. Section 353.302 is redesignated as § 353.301 and revised to read as follows:

§ 353.301 Military returnees and injured employees who recover within 1 year.

The following individuals are entitled to mandatory restoration rights to their former positions or equivalent ones.

(a) An individual returning from military duty who is entitled to restoration rights under 38 U.S.C. 2021 or 2024 (a), (b), or (c). This eligible individual must be restored as soon as possible after making application but in no event later than 30 days after the application is received by the agency.

(b) An individual who fully recovers from a compensable injury within 1 year of the date compensation begins, or from the time compensable disability recurs if the recurrence begins after the employee resumes regular employment with the United States. Such an individual must

be restored immediately and unconditionally.

13. Section 353.304 is redesignated as § 353.302 and revised to read as follows:

§ 353.302 Physical disqualification.

An individual who is physically disqualified for the former position or equivalent because of disability sustained during military service or because of compensable injury shall be placed in the agency in another position for which qualified that will provide the employee with the same seniority, status, and pay, or the nearest approximation consistent with the circumstances in each case. For an employee who sustains a compensable injury, this right applies for a period of 1 year from the date compensation begins.

§§ 353.303, 353.305, and 353.308 [Removed]

14. Sections 353.303, 353.305, and 353.308 are removed.

§ 353.307 [Redesignated as § 353.303]

15. Section 353.307 is redesignated as § 353.303.

§ 353.306 [Redesignated as § 353.304]

16. Section 353.306 is redesignated as § 353.304.

17. Section 353.501 is redesignated as § 353.305 and revised to read as follows:

§ 353.305 Restoration rights of TAPER employees.

An employee serving in the competitive service under a TAPER appointment under § 316.201 of this chapter (other than an employee serving in grade GS–16, GS–17, or GS–18), is entitled to be restored to the position he or she left, or an equivalent position in the same geographical area.

18. A new § 353.306 is added to read as follows:

§ 353.306 Leaves of absence.

Documentation, reporting, and other requirements relating to leaves of absence shall be specified from time to time in the FPM System. The following employees are entitled under Title 38 of the U.S. Code, to a leave of absence in connection with military duty.

(a) A member of a Reserve component who performs active duty for training or inactive duty (38 U.S.C. 2024(d)).

(b) An employee who reports for enlistment, induction, or physical examination (38 U.S.C. 2024(e)).

19. Section 353.401 is revised to read as follows:

§ 353.401 Appeals to the Merit Systems Protection Board.

(a) Except as provided below, an employee or former employee of an agency in the executive branch (including the U.S. Postal Service and Postal Rate Commission) who is covered by this part may appeal to the MSPB an agency's failure to restore or improper restoration. All appeals are to be submitted in accordance with the MSPB's regulations.

(b) An individual who fully recovers from a compensable injury more than 1 year after compensation begins may appeal to MSPB as provided for in Parts 302 and 330 of this chapter for excepted and competitive service employees, respectively.

(c) An individual who is partially recovered from a compensable injury may appeal to MSPB for a determination of whether the agency is acting arbitrarily and capriciously in denying restoration. Upon reemployment, a partially recovered employee may also appeal the agency's failure to credit time spent on compensation for purposes of rights and benefits based upon length of service.

Subpart E—[Heading Removed]

20. The heading for Subpart E is removed.

[FR Doc. 87–7707 Filed 4–9–87; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS Number: 1002–87]

Adjustment of Status; Persons Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This regulatory change will require that all future applicants for permanent residence under the Cuban Adjustment Act submit with their application local police clearances from every jurisdiction in the United States where they have lived for six months or more. This action is necessary because the number of applicants has decreased to the point where the automated record checks previously conducted are no longer practical.

DATE: Written comments must be received by May 11, 1987.

ADDRESS: Please submit written comments, in duplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Jospeh D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3320.

SUPPLEMENTARY INFORMATION: Currently, applicants who apply for permanent residence under the Cuban Adjustment Act of November 2, 1966 must submit with their application local police clearances from jurisdictions where they lived in the United States for six months, except from certain jurisdictions from which the Service has been able to obtain automated record checks of possible criminal history. The Service proposes to delete the exceptions. Since April 1985, the Service has processed over 70,000 applications for permanent residence under the Cuban Adjustment Act from Cubans who entered the United States during the Mariel boatlift. The number of new applications has decreased significantly. An automated record check system had been set up in certain states to handle the large amount of requests as efficiently as possible. With the anticipated decreased workload, it is no longer practical to continue this system. Under the proposed regulation, persons who file their application on or after the effective date of the regulation will have to submit local police clearances from every jurisdiction in the United States in which they reside for six months or more after their 14th birthday.

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

This order is not a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 245

Aliens, Immigration and Nationality Act, Immigration, Passports, Visas.

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

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENTS

1. The authority citation for Part 245 continues to read as follows:

Authority: Secs. 101, 103, 201, 203, 204, 212, 245, and 247 of the Immigration and Nationality Act; 66 Stat. 166, 173, 175, 178, 179, 182, 217, and 218 (8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255, and 1257).

2. In § 245.2, paragraph (a)(3)(iv) is revised to read as follows:

§ 245.2 Application.

(a) * * *

(3) * * *

(iv) *Under the Act of November 2, 1966.* An application for adjustment of status is made on Form I–485A. There is no fee required in an application for the benefits of this Act. The application must be accompanied by Form I–643, Health and Human Services Statistical Data Sheet. The application must also include a clearance from the local police jurisdiction for any area in the United States where the applicant has lived for six months or more since his or her 14th birthday.

* * * * *

Dated: March 19, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87–8011 Filed 4–9–87; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is proposing to amend its capital regulation based on its experience in implementing this regulation since it became effective in April 1985. The proposed amendments would: (1) Clarify and revise certain definitions, (2) reserve the authority of the FDIC with respect to the definitions of "primary capital" and "secondary capital," (3) specify that the terms and conditions to which capital instruments are subject must be consistent with safe and sound banking practices, and (4) limit the circumstances in which the FDIC will not approve a proposed merger transaction solely because the resulting entity does not meet the FDIC's mimimum capital requirement. These proposed amendments will benefit both the FDIC and insured banks by providing the FDIC with greater flexibility in administering its capital regulation.

DATE: Comments must be received by June 9, 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: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, telephone (202) 898–6903.

SUPPLEMENTARY INFORMATION: On February 11, 1985, the Board of Directors of the FDIC adopted a final rule on capital maintenance (12 CFR Part 325) which became effective on April 18, 1985. 50 FR 11128 (1985). The Office of the Comptroller of the Currency ("OCC") and Board of Governors of the Federal Reserve System ("FRB") took similar action during the first half of 1985, resulting in the establishment of uniform minimum capital standards for all federally supervised banking organizations. In light of the FDIC's experience in implementing its capital regulation since that time, the Board of Directors believes that certain definitions and other provisions of the regulation should be modified. Therefore, the FDIC proposes to amend Part 325 as discussed below.

Proposed Revisions to Definitions

Assets Classified Loss

The FDIC calculates primary capital as of the dates that examinations are conducted and at dates between examinations. While the longstanding practice of the FDIC has been to calculate examination date capital ratios by deducting from capital the amount of assets classified loss as of that date, the existing definition of "assets classified loss" is ambiguous in this respect. In addition, the definition incorporates the term "bank," which refers only to insured state nonmember banks, instead of the broader term "insured bank." Because the FDIC measures the primary capital of insured banks in certain circumstances, the definition of "assets classified loss" should extend to insured banks in general. Therefore, the FDIC has proposed to revise this definition accordingly.

Subordinated Note or Debenture

In order for an obligation to satisfy the definition of "subordinated note or debenture," a form of secondary capital, the instrument must meet certain requirements. Those pertaining to subordination and minimum maturity have led to implementation questions since the regulation became effective in April 1985. Two other requirements that have been part of the FDIC's policies for subordinated debt for at least five years have not previously been included in the definition.

The capital regulation's definition of a subordinated note or debenture incorporated relevant portions of the definition of this term that appeared in the FDIC's deposit interest rate regulations (12 CFR Part 329) that were in effect when Part 325 was adopted in 1985. Part 329 was subsequently amended by the FDIC effective April 1, 1986, as a result of the completion of the elimination of rate ceilings on interest-bearing deposits. The amended interest rate regulation deleted the previous version's provision on subordinated notes and debentures. Because it was simply carried over from the FDIC's interest rate regulations, the subordinated debt definition in Part 325 indicates (as it did in Part 329 prior to its amendment) that such debt obligations must be subordinated to the claims of depositors, but it makes no mention of subordination to the claims of other creditors. Nonetheless, because subordinated notes are treated as secondary capital, the FDIC believes that and, when asked, has indicated that subordinated notes, by their very nature from a capital adequacy perspective, must be subordinate to all but equity capital accounts. To clarify the issue of subordination, the FDIC proposes to amend its subordinated debt definition.

In this regard, the FDIC notes that the OCC's capital regulation (12 CFR Part 3) indirectly provides for the general subordination of a subordinate note or debenture issue by a national bank by mandating that such debt must be approved as capital by the OCC in order to qualify as secondary capital. The separate OCC rule governing subordinated debt as capital (12 CFR 5.47) requires that to obtain approval for an issue, it must comply with certain requirements, one of which deal with the priority of subordinated note-holders over other creditors of the bank. The *Comptroller's Manual for Corporate Activities* contains a model general subordination clause and states that substantially this same clause must appear in every subordinate note or debenture.

In order for an obligation to qualify as a subordinate note or debenture under Part 325, it must satisfy a Seven-year minimum maturity requirement although an obligation with a shorter original maturity is permissible in "exigent circumstances." The FDIC proposes to amend the regulation to delegate to the Director of the Division of Bank

Supervision the authority to determine whether such circumstances exist when a bank proposes to issue subordinate debt with an original maturity that is less than the seven years that would otherwise be required.

The addition, banks periodically seek to issue subordinated debt instruments which contain a provision permitting the bank at its option to redeem the debt on or after a specified date prior to its contractual maturity date. Since the definition of subordinated debt prescribes a "maturity" of at least seven years, the FCIC has been questioned as to the meaning of this term when a debt instrument has an optional redemption ("call") provision. The FDIC has taken the view that an optional redemption feature that allows the issuing bank to call all or part of a subordinated debt issue in less than seven years should not prevent an issue with a contractual maturity of seven years or more from satisfying the minimum maturity requirement provided the FDIC does not grant advance consent to the redemption of the debt at its call date when the debt is being issued. Accordingly, the FDIC proposes to add an interpretive rule to Part 325 that will set forth this position.

Section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)) provides that an insured state nonmember bank must obtain the consent of the FDIC prior to the retirement of any part of its capital notes or debentures. To ensure that all parties involved, including future holders of the notes or debentures, are aware of the requirements of section 18(i)(1), the FDIC has for many years required issues of subordinated debt to include a statement concerning the prior consent rule in the debt instrument and related agreements. The FDIC proposes to amend the subordinate debt definition to incorporate this disclosure policy.

Consistent with the provisions of the subordinated debt definition concerning the subordination of the obligation and its unsecured status and with the statutory prior consent for retirement rule, the FDIC has, for at least five years, required new issues of bank-to-bank subordinate debt to include a specific waiver of the right of offset by the lending institution. In order to assure that bankers are aware of this policy when they are planning new issues of subordinate debt, the FDIC proposes to make this waiver policy an explicit part of the definition.

Total Assets

For purposes of Part 325, "total assets" uses an average dollar amount for total assets that this taken from a bank's most recent quarterly Call Report. The current definition also discloses the locations in the commercial bank and the savings bank Call Reports where this average is reported. Because the savings bank Call Reports were extensively revised as of the March 31, 1986 report date, the disclosure of where the average of total assets may be found would be updated accordingly.

Reservation of Authority

Section 325.5(c) currently permits the FDIC to deduct from primary capital any capital instrument or balance sheet entry that would otherwise increase an insured bank's primary capital but which fails to provide capital support in the form of a cushion to absorb losses. However, this provision of the regulation does not address similar situations that might relate to secondary capital.

While Part 325 authorizes the FDIC to make deductions from capital when appropriate, the regulation does not allow for the possibility that new types of capital instrument or particular balance sheet accounts not specifically identified as components of primary or secondary capital in the definitions of those terms (§§ 325.2(h) and (i)) may be functionally equivalent to certain capital components. The absence of authority for the FDIC to accommodate such instruments or accounts within its capital adequacy framework restricts the FDIC's flexibility when these developments occur. For example, the Federal Reserve Board has recently decided to treat perpetual debt issues that satisfy certain conditions as a primary capital component for bank holding companies based on a determination that such debt is the functional equivalent of perpetual preferred stock, a primary capital component. The FDIC also recognizes that some banks establish valuation allowances for debt securities or for other real estate owned that are created in the same manner as, i.e., through charges to expense, and serve the same purpose as the allowance for loan and lease losses. However, only this latter allowance can qualify as primary capital at present.

To remedy this situation, the FDIC proposes to amend its existing § 325.5(c) along the lines of the reservation of authority provision contained in the OCC's capital regulation (12 CFR 3.5). The authority so reserved would exercisable by the Director of the Division of Bank Supervision on behalf of the Board of Directors of the FDIC. Such a change would also be consistent with the Federal Reserve Board's capital adequacy guidelines which "give the Board flexibility to adjust capital requirements and definitions to changes in the economy, in financial markets, and in banking practices." 50 FR 16060 (1985).

Covenants Inconisitent With Safe and Sound Banking Ppractices

The mission of the FDIC and its Division of Bank Supervision includes a responsibility for promoting safe and sound banking practices. Section 325.1 of the FDIC's capital regulation states that the FDIC "must evaluate capital, as an essential component, in determining the safety and soundness of banks it insures and supervises." Therefore, as an integral part of its evaluation of capital, the FDIC must consider whether any of the instruments that a bank would count as part of its capital structure includes covenants, terms, or restrictions which raise safety and soundness concerns. The FDIC been encountering debt instruments that were intended by their issuers to qualify as primary or secondary capital which contained or were covered by such covenants, terms, or restrictions.

The FDIC's Statement of Policy on Capital, which was adopted at the same time as its capital regulation, provides that "issues of perpetual preferred stock [must] be consistent with safe and sound banking practices." 50 FR 11141 (1985). While the FDIC believes that such a condition applies implicitly to all capital instruments, it proposes to make this condition explicit by adding a new § 325.5(f) to its capital regulation and by providing in an interpretive ruling examples of covenants, terms, and restrictions that are considered inconsistent with safe and sound banking practices. The language of the proposed new section is drawn from the FRB's capital guidelnes (12 CFR Part 225, Appendix A) as are certain of the examples in the interpretive ruling. Other examples are taken from criteria first adoted by the FRB and the OCC in 1976 for evaluating debt issues as additions to bank's capital structure. 41 FR 26200 (1976) and 41 FR 47969 (1976), respectively.

Merger Transactions Subject to FDIC Approval

Section 18(c)95) of the Federal Deposit Insurance Act ("FDI Act") mandates that, for every merger transaction that requires the agency's prior written approval, the FDIC "shall take into consideration the financial and managerial resources and future prospects of the existing and proposed

institutions." While the FDIC is required to consider these factors, an insured bank merger transaction may produce a resulting institution whose deposits will be insured by another federal insurance agency (e.g., the Federal Savings and Loan Insurance Corporation) and for which the FDIC will provide no residual insurance coverage. In such transactions where the FDIC has no further exposure, the Board of Directors believes that the FDIC should not be precluded from granting its consent to a proposed merger solely because the resulting entity does not meet the minimum capital requirement precribed in Part 325. Therefore, the current language of § 325.3(c)(4), which bars the FDIC from approving merger transactions when the resulting entity does not meet the FDIC's minimum capital requirements, regardless of the insurance status of the resulting entity, would be revised.

Regulatory Flexibility Analysis—Paperwork Reduction Act

The proposed amendments to Part 325 are not expected to have any significant impact on banks, including small banks.

To the extent that the proposed provison on reservation of authority increases the flexibility of the FDIC in dealing with individual bank situations, all banks, including small banks, will benefit. In this regard, the FDIC is currently required by statute to consider bank capital in a number of situations. These include applications for deposit insurance, branching, mergers, and relocations of offices. In addition, under sections 8(a) and (b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a), (b)) the FDIC is charged with the responsibility of requiring corrective action when an insured bank is in an unsafe or unsound condition or when a state nonmember bank is operating in a unsafe or unsound manner. In addition, the International Lending Supervision Act (12 U.S.C. 3907(a)(1)) requires the FDIC to "cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by using such other methods as the appropriate federal banking agency deems appropriate."

In carrying out its responsibilities the FDIC has always considered the capital adequacy of banks. However, it was not until late 1981 that the FDIC promulgated a written policy to inform banks and the public of its beliefs concerning capital and capital adequacy. 46 FR 62694 (1981). The capital maintenance regulation which the FDIC is proposing to amend became effective April 18, 1985. The FDIC's actual experience in implementing Part 325 over the past two years has revealed particular aspects of the regulation that are in need of clarification or further resolution. The proposed amendments would better inform the banking industry and the public about the standards the FDIC uses in assessing capital adequacy and how the FDIC exercises its statutory duties with regard to the safety and soundness of banks in its consideration of capital adequacy.

This proposal does not duplicate, overlap, or conflict with any existing federal laws and regulations governing insured banks or with the FDIC's responsibilities pursuant to sections 6, 8, and 18 of the Federal Deposit Insurance Act (12 U.S.C. 1816, 1818, 1828).

The proposed amendments neither alter any existing nor create any new recordkeeping or reporting requirements. Therefore, the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is not applicable.

List of Subjects in 12 CFR Part 325

Bank deposit insurance; Banks, banking; Federal Deposit Insurance Corporation; Capital adequacy; State nonmember banks.

The FDIC proposes to amend Part 325 of Title 12 of the Code of Federal Regulations as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for Part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 3907, 3909.

2. Paragraphs (a), (j), and (k) of § 325.2 would be revised as follows:

§ 325.2 Definitions

(a) *Assets classified loss.* The term "assets classified loss" means:

(1) When measured as of the date of examination of an insured bank, those assets that have been determined by an evaluation made by a State or Federal bank examiner as of that date to be a loss; and

(2) When measured as of any other date, those assets: (i) That have been determined by an evaluation made by a State or Federal bank examiner at the most recent examination of an insured bank to be a loss, and (ii) that have not been charged off from an insured bank's books or collected.

* * * * *

(j) *Subordinated note or debenture.* The term "subordinated note or debenture" means an obligation other than a deposit obligation that:

(1) Bears on its face, in boldface type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation;

(2)(i) Has a maturity of at least seven years, or (ii) in the case of an obligation or issue that provides for scheduled repayments of principal, has an average maturity of at least seven years; provided that the Director of the Division of Bank Supervision may permit the issuance of an obligation or issue with a shorter maturity or average maturity if he has determined that exigent circumstances require the issuance of such obligation or issue; provided further that the provisions of this paragraph (j)(2) shall not apply to mandatory convertible debt obligations or issues;

(3) States expressly that the obligation (i) is subordinated and junior in right of payment to the issuing bank's liabilities to its depositors and to the bank's other liabilities to its general and secured creditors, and (ii) is ineligible as collateral for a loan by the issuing bank;

(4) Is unsecured;

(5) States expressly that the issuing bank may not retire any part of its obligation without the prior consent of the FDIC; and

(6) Includes, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.

(k) *Total assets.* The term "total assets" means the average of total assets required to be included in a banking institution's "Reports of Condition and Income" (Call Reports), as these reports may from time to time be changed, as of the most recent report date, plus the allowance for loan and lease losses, minus assets classified loss, and minus intangible assets other than mortgage servicing rights. The average of total assets is found in the Call Report schedule of quarterly averages.

* * * * *

3. Paragraph (c)(4) of § 325.3 would be revised as follows:

§ 325.3 Minimum capital requirement.

* * * * *

(c) * * *

(4) In any merger, acquisition or other types of business combination where the FDIC must give its approval, where it is required to consider the adequacy of the financial resources of the existing and proposed institutions, and where the resulting entity is either insured by the FDIC or not otherwise federally insured, approval will not be granted when the resulting entity does not meet the minimum capital requirement.

4. Paragraph (c) of § 325.5 would be amended as follows:

§ 325.5 Miscellaneous

* * * * *

(c) *Reservation of authority.* Notwithstanding the definitions of "primary capital" and "secondary capital" in §§ 325.2(h) and 325.2(i), the Director of the Division of Bank Supervision may, if he finds a newly developed or modified capital instrument or a particular balance sheet entry or account to be the functional equivalent of a component of primary or secondary capital, permit one or more insured banks to include all or a portion of such instrument, entry, or account as primary or secondary capital, permanently or on a temporary basis, for purposes of this part. Similarly, the Director of the Division of Bank Supervision may, if he finds that a particular primary or secondary capital component or balance sheet entry or account has characteristics or terms that diminish its contribution to an insured bank's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from primary or secondary capital.

5. A new § 325.5(f) would be added as follows:

§ 325.5 Miscellaneous

* * * * *

(f) *Restrictions relating to capital components.* To qualify as primary or secondary capital, a capital instrument must not contain or be covered by any covenants, terms, or restrictions that are inconsistent with safe and sound banking practices.

6. New § 325.101 and § 325.102 would be added as follows:

§ 325.101 Optional redemption provision in a subordinated note or debenture.

This interpretive rule describes the effect of the presence of an optional redemption provision on the minimum maturity provision of a "subordinated note or debenture" as defined in § 325.2(j). An optional redemption ("call") provision exercisable by the issuing bank in less than seven years will not be deemed to constitute a maturity of less than seven years for the purposes of this part, provided:

(a) The obligation otherwise has a stated contractual maturity of at least seven years;

(b) The call is exercisable solely at the discretion or option of the issuing bank, and not at the discretion or option of the holder of the obligation; and

(c) The call is exercisable only with the express prior consent of the FDIC uder 12 U.S.C. 1828(i)(1) at the time early redemption or retirement is sought, and such consent has not been given in advance at the time of issuance of the obligation.

§ 325.102 Covenants inconsistent with safe and sound banking practices.

This interpretive rule provides examples of covenants, terms, and restrictions that a capital instrument must not contain or be covered by in order for the instrument to qualify as primary or secondary capital. These examples are not intended to be an exhaustive listing of such covenants; other covenants that are not expressly listed in this interpretive rule may be inconsistent with safe and sound banking practices. A covenant, term, or restriction is inconsistent with safe and sound banking practices if it:

(a) Unduly interferes with the ability of the issuer to conduct normal banking operations;

(b) Results in significantly higher dividends or interest payments in the event of a deterioration in the financial condition of the issuer;

(c) Impairs the ability of the issuer to comply with statutory or regulatory requirements regarding the disposition of assets or incurrence of additional debt; and

(d) Limits the ability of the FDIC or a similar regulatory authority to take any necessary action to resolve a problem bank or failing bank situation.

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. 87-8015 Filed 4-9-87; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-216-AD]

Airworthiness Directives; Boeing Model 737 and 757 Airplanes

AGENCY: Federal Aviation Administation (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a Notice of Proposed Rulemaking (NPRM), applicable to certain Boeing Model 737 and 757 airplanes, which would have required reworking the accumulator isolation valve. Since the issuance of the notice, the FAA has determined that the hydraulic system system will retain stored hydraulic energy, due to fluid compression and component expansion, and will provide at least 15 minutes of parking brake pressure after normal hydraulic pressure is lost. This is adequate time to perform an emergency evacuation in the event the brake accumulator is not available. Accordingly, the NPRM is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by adding a new airworthiness directive (AD) was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 15, 1986 (51 FR 44921). The proposal would have required reworking brake accumulator isolation valves on Boeing Model 737-300 and 757-200 series airplanes.

The NPRM was prompted by reports of seized accumulator isolation valves. Seizing of the valves in the closed position would block the accumulator pressure from the parking brake. In the absence of normal hydraulic power, this condition could result in the inability to set the parking brake, or the loss of parking brake pressure, depending on when the system hydraulic pressure was lost. When an emergency condition exists requiring emergency evacuation, the engines are shut down, which results in loss of normal hydraulic systems. If the brake accumulator isolation valve were to seize in the closed position, and the engines were not operating, the parking brake could not be set. If the brake accumulator isolation valve were to seize in the closed position, and the engines were running, the parking brake pressure could bleed off, allowing the airplane to move when parked on a slooping surface or due to wind. If an emergency evacuation were taking place, the movement of the airplane would pose a hazard to deplaning passengers and crew.

Interested parties were afforded the opportunity to comment on the proposal. Due consideration has been given to the comments received.

The Boeing Company disagreed with the proposal based on the unsafe condition addressed. Boeing presented FAA with data determined by analysis and confirmed by laboratory testing, which indicate that the hydraulic system retains stored hydraulic energy due to fluid compression and component expansion, and acts like an accumulator; this will provide at least 15

minutes of parking brake pressure after normal hydraulic pressure is lost. Further, it was noted that Airplane Flight Manual and Operations Manual procedures for emergency evacuation direct the crew to set the parking brake prior to shutting down engines. The FAA has considered this information and has determined that 15 minutes is adequate time to complete an emergency evacuation after the engines are shut down. Therefore, the unsafe condition addressed in the NPR cannot be established, and withdrawal of the NPRM is appropriate.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another Notice in the future, or commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor final rule, and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

PART 39—[AMENDED]

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

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

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

2. By withdrawing the proposed airworthiness directive, Docket 86-NM-216-AD, published in the **Federal Register** on December 15, 1986 (51 FR 44921), FR Doc. 86-27974.

Issued in Seattle, Washington, on April 1, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-7984 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-38-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive, (AD), applicable to CASA Model C-212 series airplanes, that would require installation of an artificial stall warning system. This proposal is prompted by reports that inadequate natural stall warning may exist on CASA Model C-212 airplanes. This condition, if not corrected, could lead to an inadvertent stall condition.

DATES: Comments must be received no later than May 15, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-38-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur D. Scholes, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-38-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A special FAA team was recently dispatched to Madrid, Spain to review the stall characteristics of the CASA Model C-212 airplane. The FAA team determined that the natural stall warning was inadequate. Although the Model C-212 airplanes have exhibited excellent flight service experience, and the flight crew does not normally operate in the flight region of airplane stall, it may be possible for a flight crew to inadvertently approach stall conditions. It is necessary to provide adequate stall warning by requiring installation of artificial stall warning equipment.

Since this condition may exist on other airplanes of this type design, an AD is proposed that would require installation of an artificial stall warning system.

It is estimated that 40 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Estimated cost of parts is $1,000 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $59,200.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,480). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to all Model C-212 series airplanes including Indonesian manufactured C-212's Serial Numbers 64N and 73N, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent inadvertent stalls, accomplish the following:

A. Within 30 days after the effective date of this AD, install an artificial stall warning system in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Seattle, Washington.

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Federal Aviation Administration, Standardization Branch, ANM-113, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 1, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-7983 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 239, 240 and 279

[Release 33-6695, 34-24289, 35-24360, IC-15655, IA-1064, S7-13-87]

Independent Accountants; Mandatory Peer Review

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is publishing for comment proposed amendments to its rules that would require that financial statements included in filings with the Commission be certified by an independent accountant which has undergone a peer review of its accounting and auditing practice within the last three years. Available information supports the position that peer review contributes to the improvement of the quality of audits, which in turn improves the reliability of financial statements. The Commission anticipates that the rules, if adopted, would be effective approximately eighteen months after the date of their adoption.

DATE: Comments should be received by the Commission on or before July 9, 1987.

ADDRESS: Comments should refer to File S7-13-87 and should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549. All comments will be available for public inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: John A. Heyman or Robert E. Burns (202-272-2130), Office of the Chief Accountant, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION

Contents

I. Executive Summary

The Commission is publishing for comment proposed amendments to its rules that would require that financial statements included in filings with the Commission, in order to be certified, be examined by an independent accountant which has undergone a peer review of its accounting and audit practice within three years of the date of the completion of the examination. The Commission anticipates that the rules, if adopted, would be effective approximately eighteen months after the date of their adoption.

The Commission has previously stated that it believes that peer review contributes to improving audit quality. Recently, several private-sector bodies have recommended that peer review be mandatory for accountants whose reports are filed with the Commission. In addition, one governmental body has adopted, and one is considering the issue of, mandatory peer review. It is therefore appropriate that the Commission address the issue of mandatory peer review at this time.

The Commission's experience with both quality control reviews conducted pursuant to the settlement of enforcement actions against accountants and the current voluntary peer review program provides evidence that peer review is a good test of an accountant's quality controls. Data exists that supports the view that peer reviews contribute to the improvement of the quality of audits.

Generally accepted auditing standards ("GAAS") require an accountant to establish and adhere to a system of audit quality controls which is sufficient to provide a reasonable assurance that audits are conducted in accordance with GAAS. The objective of peer review is to test the adequacy of, and compliance with, the audit quality control system required by GAAS. As GAAS already requires the establishment of quality controls the major incremental cost which mandatory peer review should cause an accountant to incur is the fee paid triennially to the peer reviewer. Information available to the Commission indicates that peer review fees for accounting firms with twenty or less professionals average $600 per partner annually, and that the per partner cost to larger firms would generally be lower.

The proposed rule would amend the Regulation S-X definition of "certified" financial statements to require that such financial statements be examined by an independent accountant which has undergone a peer review within the three years preceding the date of the completion of the examination.[1]

[1] See footnote 53.

Accountants would have the option of satisfying the requirement by undergoing a peer review under the auspices of an acceptable peer review organization ("PRO") or, alternatively, by having their peer review supervised directly by the Commission.

The proposed rules include standards relating to the qualifications for peer reviewers, the study of the accountant's system of, and compliance with, audit quality controls, the documentation of the peer review and the preparation of the peer review report, and the accountant's response thereto. The proposed peer review standards provide that peer reviews must include the selection and review of a sample of audit engagements which is representative of the accountant's accounting and auditing practice. While not incorporated in the text of the proposed rules, the Commission wishes to solicit comments on whether any final rules should specifically require the selection and review of audits which are the subject of private litigation or Commission investigations.

The proposed rule indicates the functions a PRO must perform for the peer reviews conducted under its auspices to satisfy the requirements of the rule. PROs would be required to supervise the peer reviews performed under their auspices, through the establishment of peer review policies and procedures, the review of the peer reviewers' work and the review and evaluation of the peer review reports and the reviewed accountants' responses thereto, to insure that peer reviews are conducted in accordance with the standards stated in the proposed rule. Additionally, PROs would be required to appoint a body of at least three independent individuals to represent the public interest in overseeing the PRO's activities.

The proposed rules would not grant PROs the authority to discipline an accountant, nor would it prohibit disciplinary action by PROs. Further, any disciplinary action taken by a PRO would not have the direct effect of prohibiting an accountant from certifying financial statements to be filed with the Commission. If an accountant leaves a PRO, the accountant may continue to certify financial statements included in filings with the Commission by having a peer review performed under the auspices of another PRO or under the direct supervision of the Commission. A PRO would be required to notify the Commission when an accountant failed or refused to take appropriate actions to correct any deficiency in the accountant's system of, or compliance with, audit quality controls which caused that system to fail to provide reasonable assurance that audits are conducted in accordance with GAAS.

Both the PRO and its body of public interest representatives would be subject to Commission oversight. That oversight would include the review of peer review workpapers by the Commission.

Accountants choosing not to participate in the peer review program of a PRO would have their peer review directly supervised by the Commission. The accountant would select a peer reviewer meeting the requirements of the rule, which would then prepare policies and procedures to be utilized in the peer review which meet the requirements of the rule. The Commission would perform the functions otherwise performed by a PRO for a peer review conducted under its auspices.

The proposed rules would apply to all filings under the Securities Act of 1933 ("the Securities Act"), the Securities Exchange Act of 1934 ("the Exchange Act"), the Public Utility Holding Company Act of 1935 ("the Holding Company Act"), the Investment Company Act of 1940 ("the Investment Company Act") and the Investment Advisers Act of 1940 ("the Investment Advisers Act"). The proposed rules would not apply to accountants certifying the financial statements of brokers or dealers filed pursuant to Rule 17a–5 under the Exchange Act.

Foreign auditors would be exempt, as would accountants certifying the financial statements of businesses acquired or to be acquired required by Rule 3–05 of Regulation S–X or other similar rules [2] if the entity is not subject to Commission reporting requirements. The proposed rule includes transition provisions which would allow an accountant which first becomes subject to the rule after its effective date a period of eighteen months to complete its initial peer review, provided that audits of financial statements filed with the Commission in the interim are reviewed by an accountant which meets the qualifications for a peer reviewer.

Under the proposed rules, the definition of certified financial statements would also require that the accountant performing the examination have established and be maintaining a quality control system meeting the requirements of GAAS. An accountant's compliance with the peer review requirement would create a presumption that such a system is being maintained and adhered to. However, if it appears to the Commission that (i) an accountant is not maintaining or adhering to the system of audit quality controls required by GAAS, or (ii) deficiencies existed indicating that the accountant's system of, or compliance with, audit quality controls does not provide reasonable assurance that audits were being conducted in accordance with GAAS [3] and those deficiencies are not being adequately corrected and/or appropriate interim measures are not being taken, then, in either case, the Commission would have the discretion to issue a preliminary determination that the accountant does not satisfy the requirements set forth in the definition for "certified" financial statements. This preliminary determination would be based on the Commission's review, to the extent it deems necessary, of the peer review report, the peer reviewer's letter, the accountant's response thereto, the peer review workpapers, and any other relevant information brought to the Commission's attention. Commencing 15 days after the delivery of the preliminary determination, any future financial statements examined by that accountant would fail to meet the requirement for certified financial statements as defined in Rule 1–02(f) of Regulation S–X. The accountant would have the right, however, to petition the Commission for a hearing on the issue. If such a petition were filed, the preliminary determination would not become final, and a proceeding for determining whether the accountant satisfies the requirements in the definition would be initiated in accordance with the Commission's Rules of Practice, 17 CFR 201.

The failure of an accountant to undergo a required peer review would cause, without further action by a PRO or the Commission, future financial statements examined by that accountant to fail to meet the requirement for certified financial statements as defined in Rule 1–02(f) of Regulation S–X.

The Commission is also requesting comments on means other than mandatory peer review, including but not limited to a disclosure requirement, by which the Commission could (i) encourage the use of peer review to improve the quality of registrant's audits, and (ii) adequately inform

[2] See footnote 56.

[3] The existence of such deficiencies in an accountant's system of, or compliance with, audit quality controls should normally result in the issuance of other than an unqualified peer review report.

investors of the quality of the registrant's audits.

II. Discussion of Peer Review and Audit Quality Controls

A. Background

The Commission has long supported the concept of peer review as a way of providing added assurance to investors, creditors and clients that an accountant is consistently complying with professional standards. Since at least 1975 the Commission has either required or accepted a review of an accountant's quality controls as a condition of settling enforcement actions in appropriate cases. Further, the Commission has identified peer review as the single most important element of the accounting profession's response to the various recommendations for self-initiated reform made by the Congress, the Commission and others during the 1977 hearings conducted by the U.S. Senate Subcommittee on Reports, Accounting and Management.[4]

Recently several private sector bodies have suggested that membership in the SECPS or a similar quality control organization should be mandatory for accountants whose reports are filed with the Commission. For example, the AICPA Council, in October 1986, endorsed and authorized an AICPA membership vote on a recommendation by the Special Committee on Standards for Professional Conduct of CPAs that firms containing AIPCA members should be required to join the SECPS if they audit one or more SEC clients.[5] The National Commission on Fraudulent Financial Reporting ("NCFFR") has also, as one of its tentative conclusions, recommended mandatory membership for accountants whose reports are filed with the Commission.[6] Additionally, proposals by Price Waterhouse [7] and the chief executive officers of seven other major accounting firms [8] both called for mandatory peer review for accountants practicing before the Commission.[9]

One governmental body has adopted, and another is considering adopting, requirements for the mandatory peer review of accountants in connection with the audits of certain financial statements filed for regulatory purposes. As a result of its hearings on the quality of the audits of the recipients of federal assistance funds performed by accountants under the Single Audit Act, the House Committee on Government Operations has recommended [10] that the General Accounting Office ("GAO") revise its standards to provide that accountants performing such audits undergo periodic peer review.[11] Also, in January 1986, the Rural Electrification Administration adopted rules [12] which require accountants certifying the financial statements of borrowers to belong to and participate in an approved peer review program.

Finally, at a roundtable discussion with the Commission on financial reporting and the role of the independent auditor, participants expressed the view that

> the peer review process of the AICPA's Division for Firms has served an important and effective role in the regulatory system for the past ten years. Nevertheless, various participants voiced recommendations for improvement including mandatory membership, increased involvement by the Commission, and more effective disciplinary action.[13]

In view of these recent developments and the Commission's previous conclusions regarding the benefits of peer review, it is appropriate to consider at this time whether peer review should be mandatory for accountants that certify certain financial statements which are included in filings with the Commission.

The Commission, through Regulation S-X, has set forth the form, content, and requirements for financial statements required to be filed pursuant to the federal securities laws, including the requirements for notes to the financial statements and for related schedules. The Commission's broad authority to establish such requirements includes its specific authority to require independent audits of registrants,[14] to define technical and accounting terms,[15] to prescribe the reports and information to be filed,[16] and to prescribe the form in which information is set forth and the methods to be followed in the preparation of reports.[17] The

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[4] *See, e.g., Securities and Exchange Commission Report to Congress on the Accounting Profession and the Commission's Oversight Role*, 94th Congress, 2nd Session (July 1978). In September 1977, the American Institute of Certified Public Accountants ("AICPA") created a new Division of CPA Firms and, within that Division, an SEC Practice Section ("SECPS"), which includes a Public Oversight Board ("POB") composed of distinguished individuals from outside the profession. According to the POB's 1985-1986 Annual Report, 178 accountants (firms or individuals) that audit public companies were members of the SECPS as of June 30, 1986. Those members audited approximately 8,730 or 83.9% of all publicly traded companies. Those companies account for approximately 99.4 percent of the total revenues of all publicly traded companies. Approximately 1,700 publicly traded companies were audited by approximately 625 accountants who were not SECPS members. The POB's report was based on an analysis of the accountants which audit the companies listed in the 15th edition of *Who Audits America*.

These and other related statistics in this release do not include accountants which would be subject to the proposed rule only because they audit investment advisers required to file solely pursuant to the Investment Advisers Act. There are approximately 600 investment advisers that are required to file audited balance sheets with the Commission. The Commission is presently unable to determine such peer review related statistics, and is specifically requesting comments containing data on the number of accountants which have and have not been peer reviewed that would be subject to the proposed rule due solely to investment adviser clients.

[5] *See, Report of the Special Committee on Standards of Professional Conduct for Certified Public Accountants*. The balloting of the AICPA membership began on January 29, 1987 and will conclude on March 30, 1987.

[6] *See* "Initial Conclusions of the National Commission on Fraudulent Financial Reporting," address by James C. Treadway, Jr. to the AICPA, October 21, 1986. NCFFR's tentative recommendation has been endorsed by the Financial Executives Institute. *See FEI Position* (February, 1987); Financial Executives Institute.

[7] *See* "Challenge and Opportunity for the Accounting Profession: Strengthening the Public's Confidence," Price Waterhouse (1985).

[8] *See* "The Future Relevance, Reliability, and Credibility of Financial Information—Recommendations to the AICPA Board of Directors" (April, 1986).

[9] The Price Waterhouse proposal would require peer review through mandatory membership in a statutory self-regulatory organization. The proposal of the other firms would mandate SECPS membership.

[10] *See* House Committee on Government Operations, *Substandard CPA Audits of Federal Financial Assistance Funds: The Public Accounting Profession is Failing the Taxpayers;* House Report 99-970, 99th Congress, 2nd Session (1986).

[11] The Committee recommended that "Before establishing a peer review standard, however, the GAO should determine whether current peer review procedures are excessively expensive—especially for smaller firms. If such is found to be the case, GAO should work with the public accounting profession and Inspectors General to develop reasonably priced alternative peer review procedures." H.R. 99-970 *supra*, at 29.

[12] 51 FR 2788 *et seq.* (January 21, 1986).

[13] *See* "SEC Roundtable—Financial Reporting and the Role of the Independent Auditor—June 3, 1986."

[14] Sections 7, 10, and Schedule A of the Securities Act, sections 12(b), 13(a) and 17(e) of the Exchange Act, sections 5(b), 10(a), and 14 of the Holding Company Act, sections 8(b) and 30(e) of the Investment Company Act, section 203(c) of the Investment Advisers Act; 15 U.S.C. 77g, 77j, 77aa, 78*l*, 78*m*, 78q(e) 79e(b), 79j(a), 79n, 80a-8(b), 80a-29(e), 80b-3(a).

[15] Section 19 of the Securities Act, section 3(b) of the Exchange Act, section 20(a) of the Holding Company Act, section 38(a) of the Investment Company Act; 15 U.S.C. 77s, 78c, 79t(a), 80a-37(a).

[16] Sections 7 and 10 of the Securities Act, sections 12(b), 13(a), and 13(b) of the Exchange Act, section 14 of the Holding Company Act, section 30 of the Investment Company Act, sections 203 and 204 of the Investment Advisers Act; 15 U.S.C. 77g, 77j, 78*l*, 78m, 79n, 80a-29, 80b-3, 80b-4.

[17] Section 19(a) of the Securities Act, section 13(b) of the Exchange Act, section 20(a) of the Holding Company Act, sections 31(c) and 38(a) of the Investment Company Act; 15 U.S.C. 77s, 78m, 79t(a), 80a-30(c), 80a-37(a).

Commission also has general authority to make such rules and regulations as may be necessary to implement the provisions of the securities laws.[18] Pursuant to the Commission's specific authority to prescribe the reports to be filed and to define terms, and pursuant to its general rulemaking authority, the proposed rules would amend the definition of certified financial statements in Rule 1–02(f) of Regulation S–X to include the requirement that the financial statements be examined by an independent public or certified public accountant which is in compliance with peer review requirements specified in the proposed new Article 1A and which is maintaining and adhering to a quality control system meeting the requirements of GAAS.

Based on its experience with the peer reviews performed pursuant to the settlement of enforcement actions and in overseeing the current voluntary peer review program, and its review of available information concerning the effectiveness of peer review, the Commission believes that peer review contributes to the improvement of the overall quality of audits through the more effective application of professional standards. As a result of improved audits, the Commission believes that the completeness and accuracy of financial disclosure is improved and the integrity of the financial reporting process is enhanced. Because of the benefits received by investors in the form of an improved disclosure process, the Commission believes that the proposed rules are reasonably related to implementing the provisions of the securities laws.

B. The Concept of Peer Review

As previously outlined by the Commission,[19] the underlying concept of peer review is to provide a regular examination and evaluation of the work of each accountant which audits publicly-held clients in order to assess whether that accountant's work conforms to the high standard expected of those who assume the responsibilities of independent accountants under the federal securities laws. To be successful, a peer review must satisfy three objectives. First, it must incorporate and apply meaningful standards of quality control to both the work of the reviewer and of the accountant being reviewed. Second, it must be structured in such a manner as to assure independence in fact and promote public confidence in the credibility of the peer review process. Third, the peer review process must be sufficiently open to examination by representatives of the public interest, including the Commission, so that each may discharge its oversight responsibilities. The peer review standards and other provisions included in the proposed rules are based on these concepts.

1. The Nature of Quality Control

The practice of public accounting has been, throughout the larger part of its history, a basically individual endeavor involving the exercise of professional judgment. As the size of businesses grew, the audit function became concomitantly more complex and the size of many accounting firms increased to keep pace with the needs of clients. As a result, the practice of public accounting, particularly auditing, became increasingly institutionalized.

This institutionalization of auditing gave rise to a need for mechanisms more formal and consistent than individual judgments to provide firms with effective managerial and professional controls over the practice. "Audit manuals" were developed by many firms to provide guidelines in various areas, forms and checklists were standardized and other steps were taken, both by individual firms and by professional groups, to help provide the necessary controls. As the complexity of accounting and auditing grew, these mechanisms also became increasingly complex.[20]

None of these mechanisms, however, can take the place of the exercise of individual professional judgment. Rather, they serve to help confine such judgments to nonroutine matters and to ensure that such judgments are made within an established framework and are subject to appropriate review.

The basic framework of the "quality control system" of every public accounting practice is provided by the authoritative auditing literature. Adherence to GAAS is required in connection with any audit report issued and the body of literature promulgated by the AICPA's Auditing Standards Board provides extensive guidance on compliance with these standards. Basic concepts of quality control were themselves codified in the auditing literature in 1974 with the issuance of Statement on Auditing Standards ("SAS") No. 4, "Quality Control Considerations for a Firm of Independent Auditors." That pronouncement was later superseded by SAS No. 25, "The Relationship of Generally Accepted Auditing Standards to Quality Control Standards."[21]

2. The Nature of Peer Review

Peer review (or "quality control review") is, in effect, the "auditor's audit"—an independent examination of an accountant's quality control system by other accountants engaged in public practice and thus expert in matters of accounting and auditing. These reviews evaluate whether a reviewed accountant's system of quality control for its accounting and auditing practice is appropriately comprehensive and suitably designed for the accountant and whether its quality control policies and procedures are adequately documented, communicated to professional personnel and complied with to provide the accountant with reasonable assurance of conforming with the standards of the profession.

Peer review is a two part process, somewhat analogous to an auditor's review of a client's system of internal accounting control. The evaluation is accomplished through:

(i) Study and evaluation of a reviewed accountant's policies and procedures that comprise its quality control system; and

(ii) Review for compliance with a reviewed accountant's quality control policies and procedures by—

—Review at each organizational or functional level within the organization; and

—Review of selected engagement working paper files and reports.

Reviews are thus conducted at several different levels. The system of quality control itself is being reviewed, within the context of the particular

[18] Section 19 of the Securities Act, section 23(a) of the Exchange Act, section 20(a) of the Holding Company Act, section 38(a) of the Investment Company Act and section 211(a) of the Investment Advisers Act; 15 U.S.C. 77s, 78w, 79t(a), 80a–37(a), 80b–11(a).

[19] *See, e.g., Securities and Exchange Commission Report to Congress on the Accounting Profession and the Commission's Oversight Role.* 94th Congress, 2nd Session (July 1978).

[20] For example, quality control policies and procedures, such as pre-issuance review of public company audits by experienced personnel not otherwise associated with the engagement, and periodic rotation of audit partners (where practical), are believed to be widely recognized as essential elements of an effective quality control system. Many of these kinds of quality control policies and procedures have evolved in practice as accountants have sought to provide themselves with reasonable assurance of conforming with GAAS in audit engagements. In addition to seeking to fulfill public expectations for reliable audits, accountants would naturally want to take appropriate steps to minimize exposure to the risks attendant to an alleged or actual audit failure.

[21] AICPA Professional Standards AU section 161. A discussion of the necessary elements of a system of audit quality practices and procedures is contained in Statement on Quality Control Standards No. 1 (AICPA Professional Standards QC section 10).

accountant's professional practice, against the framework established by SAS No. 25. The actual conduct of the accountant's accounting and auditing practice is measured against:

(i) Generally accepted auditing standards;

(ii) The guidelines provided by the authoritative literature under GAAS; and

(iii) The quality control policies and procedures established by the accountant.

The conduct of the accountant's practice is also being examined in terms of the judgments made in applying generally accepted accounting principles ("GAAP"), since engagement reviews include a review of the related financial statements.

C. Benefits of Peer Review

The Commission's 1985 Annual Report to Congress stated that—

> The Commission believes the peer review process contributes significantly to improving quality controls of members and thus should enhance the consistency and quality of practice before the Commission.[22]

The Commission recognizes that numerous factors affect the quality of an accountant's accounting and auditing practice, and that peer review cannot prevent isolated breakdowns in audit quality controls and the resultant audit failures. However, the Commission has previously stated that it believes that undergoing a peer review reinforces an accountant's commitment to the maintenance of adequate audit quality controls.[23] Further, the Commission staff's experience with quality control reviews conducted pursuant to SEC enforcement actions as well as in overseeing the peer review program of the SECPS provides evidence that peer review is a good test of an accountant's quality controls. Peer reviewers have made extensive constructive criticisms of accountant's controls, raised and resolved substantive accounting and auditing questions, and suggested corrective actions, such as additional audit work, the revision of financial statements, the reassignment of personnel, the issuance of new or revised guidance to personnel on specific accounting and/or auditing matters and special training or supervision of personnel. Others have also recognized and discussed the benefits of peer review.[24]

Studies performed by the Commission staff and the GAO indicate that peer review affects the quality of audits. A Commission staff study of the 48 enforcement actions brought by the Commission against accountants from 1981 through 1986 found that 33 of the actions were brought against accountants which had not, at the time the allegedly deficient audit was conducted, undergone a peer review.[25] The remaining 15 actions were brought against accountants which had undergone peer review as a result of their voluntary membership in the SECPS or the Private Companies Practice Section ("PCPS") of the AICPA Division for CPA Firms.[26] Accountants which have undergone peer review have annually audited between 77 and 86 percent of all registrants during the same time period. The results of the study therefore show that the incidence of enforcement actions against accountants which had not undergone peer review was approximately eleven times higher than that for accountants which had been peer reviewed.

The Commission recognizes that factors other than peer review may contribute to this result (e.g., an accountant's size, its experience in auditing registrants or the possibility that accountants with better audit quality controls are more likely to voluntarily undergo peer review). There is presently a close correlation between the size of accounting firms and their peer review status (i.e., a greater percentage of larger accounting firms presently undergo peer review than smaller ones), and the available data was not sufficient to enable the staff to isolate the effect of peer review status or size on the results.

However, the Commission notes that when the audits performed by, and enforcement actions against, accountants which audit 30 or more registrants [27] are excluded, there is still a significant difference between the incidences of enforcement actions against accountants which have been peer reviewed and those which have not undergone peer review, even though both groups are comprised of accountants which are similar in size when measured in terms of the number of registrant clients.[28] Specifically, thirty-one actions were brought against accountants which had not been peer reviewed prior to conducting the audit in question, compared to two actions brought against the accountants which had undergone peer review. However, accountants which had been peer reviewed conducted approximately 33 percent of the audits.

The staff of the Commission also studied the nature of the audit problems identified in enforcement actions. The results indicate that a substantial number of the actions against accountants which had not undergone peer review disclosed a general audit failure due to significant lack of audit quality controls, a failure to apply basic auditing procedures and/or an absence of a working understanding of basic GAAP. In contrast, the actions brought against accountants which had been peer reviewed disclosed far fewer such problems, and were more often related to isolated breakdowns in audit quality controls or the inappropriate application of GAAS or GAAP to relatively complex transactions or events. A similar pattern resulted when the actions were classified based on the size, rather than the peer review status, of the accountant.[29] This appears to be due to the fact that, as previously stated, there is presently a close correlation between size and peer review status. As a result, the "peer reviewed" and "large" groups, and the "not peer reviewed" and "small" groups, in this study contained largely the same accountants.

The Commission believes that these studies, when viewed in total, may indicate that peer review is a factor affecting the difference in the incidence of, and the nature of the audit problems identified in, the enforcement actions against accountants which have been peer reviewed as opposed to those which have not. However, it is not possible to conclude from these data whether peer review is the dominant factor, or the relative significance of peer review as a factor in comparison to the effect of an accountant's size or

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[22] U.S. Securities and Exchange Commission Fifty-First Annual Report, p. 17–18

[23] *See, generally*, U.S. Securities and Exchange Commission Forty Seventh Annual Report at p.29.

[24] *See, e.g., Peer Review: Its Impact on Quality Control*, Journal of Accountancy (July, 1981); *Peer Review: Enhancing Quality Control*, Journal of Accountancy (October, 1983); *The AICPA Division for Firms: Problems and a Challenge*, Journal of Accountancy (Augus.t, 1984); and *Measuring the Effectiveness of the Peer Review Program*, The Ohio CPA Journal (Autumn 1986).

[25] In eight instances the accountant underwent peer review subsequent to the completion of the audit in question.

[26] PCPS members are also required to undergo triennial peer reviews. Approximately 180 public companies are audited by approximately 120 accountants which are PCPS members only. Certain membership requirements and peer review standards of the PCPS differ from those of the SECPS, and the POB and the Commission do not oversee the activities of the PCPS. However, the nature of the peer review required by each body is similar.

[27] The 1986 POB report indicates that as of June 30, 1986 there were 13 such firms which, in total, audited 78 percent of all public companies.

[28] Accountants in each group had an average of three registrant clients.

[29] Accountants with more than five registrant clients were classified as "large"; those with five or less were classifed as "small".

other possible factors. The Commission is therefore specifically requesting comments on the extent to which peer review status, accountants' size or other factors are the cause of the differences observed in these studies.

A recent study by the GAO of audits performed under the Single Audit Act also indicated that peer review has an effect on audit quality. The GAO reviewed 150 governmental audits, 77 of which were performed by accountants which had been peer reviewed and 73 of which were performed by accountants which had not.[30] Of the audits performed by accountants which had not been peer reviewed, 59 percent were found to be unsatisfactory, compared to 18 percent of those performed by accountants which had been peer reviewed. The percentages of audits with "severe standards violations" were 41 percent and 2 percent, respectively, for the two groups of accountants.

Peer review also contributes to the improvement of audit quality through its periodic identification and correction of weaknesses in an accountant's audit practices and procedures. Statistics published by the POB indicate improvement in the audit practices of member firms. Since the SECPS peer review program began in 1978, 16.3 percent of initial peer reviews have resulted in the issuance of a modified (i.e., qualified or adverse) peer review report, while only 7.4 percent of the reports on subsequent (i.e., second and third) peer reviews were modified. Also, the percentage of individual audits reviewed which were found to be substandard in the application of GAAP or GAAS has decreased from 3.5 percent in 1981 to 0.8 percent in 1985. The 1985–1986 POB Report further states that "Comparison of the letters of comments issued in 1985 with those issued to the same firms on the prior review indicates that most firms, including those that received unqualified reports on both reviews, had improved their quality control systems in the three-year period." The Commission recognizes that factors other than peer review, such as accountants' reactions to the increasing incidence of litigation, may have contributed to these improvements over time. On the other hand, it also recognizes that peer reviews have identified and resulted in the correction of audit quality control weaknesses which were not identified by the reviewed accountant on its own. The Commission is specifically requesting that commentators discuss the extent to which these observed improvements in the quality of audits are the result of the effects of peer review or other factors.

Aside from the evidence supporting the benefits of peer review provided by the Commission's experience with peer review and these studies, there appears to be a significant public acceptance that peer reviews are effective. A recent survey [31] of individuals familiar with the work of accountants or who invest in equity securities [32] conducted for the AICPA by Louis Harris and Associates, Inc. revealed that the majority of those who were aware of the current peer review programs believed that the fact that an accountant had been peer reviewed would be a factor they would consider if they were choosing an auditor. In addition, the majority believed that peer review should be mandatory for auditors of public companies.

These studies contribute to the view that peer review both is effective, and is accepted as being effective, in improving audit quality. However, the Commission is specifically requesting that commentators discuss, and provide empirical data on, the effect (or lack thereof) that peer review has on the quality of an accountant's accounting and auditing practice.

D. Costs of Peer Review

The Commission recognizes that the adoption of a mandatory peer review rule would require accountants to incur certain costs. Primarily, accountants would incur the direct cost of fees paid to the peer reviewers. This cost may raise the total cost of auditing registrants to an accountant that is not now undergoing peer review but is providing or intends to provide auditing services to registrants. Additionally, some may believe that such a rule may increase the costs incurred by an accountant in developing, documenting and maintaining its audit quality control practices and procedures.

1. Peer Review Fees

A survey by the AICPA of SECPS peer reviews performed in 1984 by AICPA appointed teams indicated that the fees for those reviews ranged from $2,600 every three years for a firm of two professionals to $8,700 every three years for a firm of 30 professionals. More recently, the AICPA surveyed the 52 accounting firms which are members of the SECPS or PCPS which have less than 20 professionals and audit at least one SEC client. The responses [33] to that survey indicated fees for peer reviews performed between 1984 and 1986 by another accountant, an AICPA appointed team or a team appointed by a state CPA society [34] ranged from $2,600 for the one sole practitioner surveyed to an average of $6,400 for the two largest firms (eight partners and an average of 17 total professionals) responding. Based on this data, the Commission estimates that the average cost of a peer review fee to each of the estimated 500 accountants that presently audit registrants [35] would be approximately $4,500 every three years, or approximately $500 annually per registrant-client.[36] In general, it is estimated that the annual cost per partner for accounting firms with twenty or less professionals would average approximately $600, and that the per partner cost for larger accounting firms would generally be lower.

[30] *See generally*, Comptroller General of the United States, U.S. General Accounting Office, Report to the Chairman, Legislation and National Security Subcommittee, House Committee on Government Operations: *CPA Audit Quality Inspectors General Find Significant Problems* (December 1985); and AICPA, Report of the Task Force on the Quality of Audits of Governmental Audits—Final Draft (February 1987). The statistics in this paragraph are based on data made available to the Commission which was compiled by the AICPA for use in the preparation of the final draft of the Task Force Report.

[31] *See, A Survey of the Perceptions, Knowledge and Attitudes Towards CPAs and the Accounting Profession*, Louis Harris and Associates, Inc. (October, 1986).

[32] The groups surveyed included owners and managers of small and medium-sized businesses, executive officers and audit committee members of large corporations, senior bank loan officers, Federal and state officials who deal with financial related issues, members of the financial media, accounting academics and securities analysts.

[33] The survey also sought information on the costs incurred by accountants in preparing for their initial peer review, the effects of peer review on their audit quality control practices and procedures, and other information on the costs and benefits of peer review. A copy of the summary of the results prepared by the AICPA staff has been placed in the public file under the S7 file number mentioned at the beginning of this release.

[34] Under the SECPS program, an accountant may choose to have its peer review performed by (i) a review team appointed by the SECPS from a pool of reviewers provided by each member firm, (ii) another accountant engaged by the reviewed accountant (a "firm-on-firm" review), or (iii) a review team appointed by a state CPA society.

[35] Of the 625 accountants presently auditing registrants which are not members of the SECPS, approximately 125 undergo peer review pursuant to their membership in the PCPS. The fees for PCPS peer reviews are slightly lower than those for SECPS peer reviews. Those accountants may experience a small increase in their peer review fee costs if the proposed rules are adopted.

[36] This estimate is based on three registrant clients per accountant, which is the average number of registrants audited by accountants which presently do not undergo peer review. The presentation of this statistic does not, however, reflect an assumption that any accountant will seek to recover this cost only from registrant (as opposed to all) clients, or that any or all of the cost will be recovered from clients.

Of course, the peer review fee for a specific accountant may vary from any such estimate, due to the size of the accountant's practice, the number and complexity of its audits and the nature of its audit quality practices and procedures. Additionally, fees for firm-on-firm reviews may vary from those performed by a team of individuals. The Commission is specifically requesting additional information from commentators on the cost of peer review. Data is requested on the costs of peer review on a per partner or per professional staff basis. Information is also requested on the nature of the accounting firms (number of partners, professional staff and publicly-held clients) which are not presently subject to peer review and which would, therefore, be affected if the proposed rules were adopted. Commentators are also specifically invited to address the extent, if any, to which the fees for peer reviews performed under the auspices of any other PRO which may be formed, or those obtained outside the auspices of a PRO, might be expected to vary from those being experienced under the current AICPA program.

2. Internal Costs

The AICPA survey also requested information on the nature and amount of the costs, if any, incurred by accountants in preparing and/or documenting their audit quality control systems for their initial peer review. Such costs could include, for example, the cost of the internal development or documentation of a quality control system, the purchase of a quality control manual from another accountant, the hiring of professional personnel or an outside consultant to oversee the development and implementation of quality control procedures and/or special training for professional staff.

Some believe that peer review should not cause an accountant to incur significant incremental costs since the review is intended to evaluate whether an accountant's system of quality control meets the objectives otherwise required by professional standards. Statement on Auditing Standards ("SAS") No. 25 requires that an accountant

> Establish quality control policies and procedures to provide it with a reasonable assurance of conforming with generally accepted auditing standards in its audit engagements.

SAS No. 25 further states that

> The nature and extent of a firm's quality control policies and procedures depend on factors such as its size, the degree of operating autonomy allowed its personnel and its practice offices, the nature of its practice, its organization, and appropriate cost-benefit considerations.

Therefore, a peer review tests the existence of and compliance with an audit quality control system that should already be in place for an accountant to be complying with GAAS.

Others, however, may believe that mandatory peer review would cause affected accountants to incur significant incremental costs in preparing, documenting and maintaining their audit quality control systems. The majority of the accountants responding to the AICPA survey indicated that preparing for their initial peer review required them quality control document [37] and perform an initial internal inspection.[38] The respondents reported that an average of 50 hours were expended in developing the quality control document (hours expended on internal inspection were not provided). However, since both a quality control document which is appropriate based on the accountant's size, the nature of its practice, and the other factors enumerated in SAS No. 25, and a similarly appropriate internal inspection program would appear necessary for effective compliance with SAS No. 25, the Commission is unable to determine whether, or to what extent, the costs incurred by these accountants represent incremental costs directly related to peer review.

The Commission is therefore specifically requesting comment on whether mandatory peer review will cause accountants to incur significant incremental costs in initially preparing and documenting their quality control systems, and, if so, information on the types and amounts of costs involved. The Commission also requests similar information on the incremental costs an accountant would incur in maintaining and adhering to such a system.

The Commission recognizes that accountants that elect to obtain their peer review under the auspices of a PRO will likely incur a cost in supporting some or all of the expenses of operating the PRO.[39] Some of the costs incurred in operating a PRO, and the related support required of the accountants participating in its program, may relate to activities undertaken by the PRO which are not required under the proposed rule. On the other hand, where an accountant chooses to have its peer review directly supervised by the Commission, the Commission intends to charge the accountant a fee pursuant to the Independent Offices Appropriation Act.[40] Under that act the fee charged would generally be the lower of the costs incurred by the Commission in performing this functions or the benefit or value to the accountant as measured, for example, based on the amount the accountant would have had to pay to a PRO to perform the supervisory and public interest functions required under the rule. The Commission specifically requests comments on the specific method of calculating this fee.

An accountant which chooses to obtain its peer review under the auspices of a PRO may incur a cost (whether in the form of membership or support fees, or the costs of complying with requirements imposed by the PRO which exceed those in the proposed rule) which exceeds the fee the Commission would have charged. The Commission has considered this cost and has determined that, since the proposed requirement would allow each accountant to choose whether to obtain its peer review under the auspices of a PRO or under Commission supervision, this additional cost associated with PRO affiliation is the subject of the cost-benefit analysis that each accountant would perform in deciding which of the two alternative means it will use to obtain its peer review.

Finally, the Commission is also requesting comments addressing any other types of cost (quantified to the extent practicable) which the rule, if adopted, would impose on accountants or registrants, and whether the rule, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Commentators are requested to discuss both the potential competitive effects of the proposed rule, if adopted, on accountants which currently audit registrants, whether, and to what extent, the proposed rule would create a barrier to accountants seeking to enter into the business of auditing registrants, and any means by which such a barrier, if one would be created, could be lessened. Comments on the potential effect of the rule on competition will be considered

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[37] A quality control document is the written documentation of an accountant's audit quality control practices and procedures.

[38] The internal inspection by an accountant of its compliance with its audit quality control practices and procedures is one of the elements of audit quality control enumerated in Statement on Quality Control Standards No. 1.

[39] For example, costs of operating the SECPS and POB are presently funded by dues paid by SECPS members and by funds provided by the AICPA from its general revenues. SECPS members presently pay annual dues of $15 per professional, limited to $100 for firms with less than five SEC clients.

[40] *See*, 31 U.S.C. 9701.

by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.

III. Discussion of Proposed Rules

A. Peer Review Standards

The objective of peer review is to determine whether the reviewed accountant is maintaining and applying audit quality controls which, in accordance with the standard established by GAAS, provide a reasonable assurance of compliance with GAAS in the conduct of audit engagements. To insure that the objective is met, PROs and accountants performing Commission supervised peer reviews would be required to adopt peer review policies and procedures which provide for compliance with the peer review standards contained in the proposed rule. Those peer review standards represent what the Commission believes must, at a minimum, be encompassed in a peer review for it to meet its objective.

The peer review standards contained in the proposed rule address the qualifications for a peer reviewer, the study of the accountant's system of audit quality control, the review of the compliance with that system, documentation of the peer review, the preparation of a written peer review report, and the response by the reviewed accountant to the peer review report.

The proposed standards relating to the qualifications of peer reviewers require the reviewer to possess the requisite independence and technical training. While the independence rules of Article 2 of Regulation S–X, 17 CFR 210.2-01 *et seq.*, and the related interpretations contained in Section 600 of the Codification of Financial Reporting Policies[41] do not apply to peer review, the concepts of independence for auditors and peer reviewers are the same. Therefore, to be sufficiently independent, a peer reviewer cannot have any material family relationships or shared financial interests with the accountant to be reviewed.

The existence of family relationships must be considered both in the selection of the individuals who will perform the peer review and in the selection of a peer reviewing accounting firm if that method of review is used. Family relationships between the accountant being reviewed and any of the individuals performing a portion of the peer review would impair independence. In the case of a peer review performed by a firm of accountants, family relationships at the senior management level (i.e., chief executive or senior technical partners) of the reviewing accountant would impair independence; however, a family relationship involving a partner or employee of the reviewing firm who is not at the senior management level and does not participate in the peer review would usually not impair independence.

The independence of a peer reviewer would be impaired due to a shared financial interest if it had performed correspondent work for, or been referred work by, the accountant to be reviewed, or vice versa, and the related fees (whether paid directly by the client or by the other accountant) were material to either accountant. Finally, reciprocal peer reviews would be prohibited.

Accountants possessing the requisite technical training to perform peer reviews would be currently active at the supervisory level in the practice of public accounting, should be experienced in SEC matters and would have (or be associated with a firm which has) received an unqualified report on its latest peer review.

The proposed peer review standards would require the study and evaluation of the accountant's quality control system to determine whether it is sufficient to meet the minimum requirements of GAAS.[42] At a minimum, this study would include, but not be limited to, quality control procedures and practices relating to the monitoring of independence, the consultation within or outside the firm on accounting and auditing questions, the supervision of audit work, the hiring, professional development and advancement of personnel, the acceptance and continuation of clients, and the internal inspection of the accountant's own compliance with its policies and procedures.

The review of the compliance with the accountant's system of audit quality controls required by the proposed peer review standards would include the review of the report, related financial statements and workpapers for a selection of audit engagements which is representative of the accountant's accounting and auditing practice. In selecting audit engagements, the reviewer should consider, among other things, the types of industries and client sizes, the number of engagement hours, the supervisory personnel assigned and the need to give adequate attention to complex or high-risk engagements, and the audits of registrants and new clients.

The proposed rules would require that the documentation of the peer review be adequate to indicate the work performed and the results thereof, to demonstrate that peer review standards and the related policies and procedures have been complied with, and to provide a record of the basis for the peer reviewer's opinion.

Peer reviewers would be required to issue a report indicating the general scope of the review, including any restrictions thereon, and expressing an opinion on whether the reviewed accountant's system of audit quality control was sufficient to meet the requirements of GAAS and whether the compliance with that system was sufficient to provide a reasonable assurance that audits were being conducted in accordance with GAAS. The report would be required to indicate the nature of any exception taken as to the reviewed accountant's system of, or compliance with, the audit quality controls required by GAAS. The proposed rules would also require the peer reviewer to issue a letter, accompanying the peer review report, describing any deficiencies in the system of, or compliance with, audit quality controls which create more than a remote possibility of non-compliance with GAAS and the effect, if any, those deficiencies had on the peer review opinion.

Reviewed accountants would be required to respond, in writing, to the deficiencies identified by the reviewer, indicating the corrective actions planned or taken or the reason the accountant disagrees with the findings of the peer reviewer and/or believes no corrective actions are required. The proposed rule would require that the peer review policies and procedures utilized specify an appropriate time period within which the review is to be completed and the peer review report and any accompanying letter and reviewed accountant's response issued.[43]

Finally, PROs would be required to adopt policies and procedures for determining in what circumstance a reviewed accountant should be revisited to determine that actions described in its response to the peer review report as planned have been taken.

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[41] *See generally*, Fed. Sec. L. Rep. CCH ¶ 73,251 *et seq.*

[42] As previously stated, SAS No. 25 requires that an accountant establish quality control procedures that provide a reasonable assurance of compliance with GAAS.

[43] The proposed rules would require that these documents be submitted to the PRO or, for Commission supervised peer reviews, the Commission, within 15 days of the issuance of the peer review report.

The proposed rule indicates that the peer review policies and procedures established by a PRO or utilized in a Commission supervised peer review would be required to provide for, among other things, the selection and review of an appropriate sample of audit engagements. The proposed rule does not specify the factors which should be considered in selecting individual engagements for review. However, the Commission wishes to consider whether a final rule should include a requirement that the selection of engagements for review should include audits that are alleged to be deficient in the application of GAAS either in private litigation or Commission or other regulatory agency investigations or litigation ("contested audits").

Current SECPS peer review standards indicate that the engagements selected for review should provide a reasonable cross-section of the accountant's accounting and auditing practice. However, SECPS standards do not specifically require the reviewer to select contested audits for review and provide that, in certain circumstances, the accountant may restrict the peer reviewer's access to such audits without causing a scope limitation which would require a modification of the peer reviewer's opinion.[44]

In addition to requiring that they undergo peer review, the SECPS requires members to report to the Special Investigations Committee ("SIC") litigation and regulatory agency investigations which allege deficiencies in an audit of an SEC client. The SIC reviews the matter to determine whether the alleged audit failure indicates a weakness in the accountant's system of audit quality control which requires remedial action, or whether an inadequacy in professional standards may exist. The SIC's current policy does not call for a review of the specific audit in question; rather, the SIC's policy is to generally base its decision on a review of the complaint and the related financial statements and, if considered necessary, a review of the accountant's audit quality control system and possibly a review of other audits performed by the office or individuals or in the same industry.[45]

The Commission wishes to consider whether the effectiveness of the peer review process in contributing to the improvement in audit quality could be increased by a peer review standard requiring the review of contested audits and is soliciting comments on this question. Such a requirement could be accomplished through a provision in the Commission's rules specifying that the sample of audits selected for review should include an appropriate sample of contested audits, or a provision requiring the selection and review of contested audits in addition to the normal peer review sample, or a combination of both. Commentators should address the effectiveness of these alternatives. Additionally, the Commission wishes to consider the other effects such a requirement could have, and whether those effects outweigh the potential benefits to the effectiveness of peer review.

Not all contested audits are in fact deficient in the application of GAAS. Also, audit failures result from a variety of causes, not all of which can always be detected and corrected by peer review whether or not peer review includes the review of contested audits. Nonetheless, the inclusion of an appropriate sample of contested audits in the scope of a peer review might increase the chance that deficiencies in an accountant's system of, or compliance with, audit quality controls will be identified and corrected. This in turn could improve the ability of peer review to contribute to improving the quality of audits.

To the extent private litigants attempt to use information contained in the peer review workpapers in litigation involving alleged audit deficiencies, a rule requiring the selection and review of contested audits could make the information contained in those peer review workpapers more relevant to the litigation.

In light of the forgoing, the Commission is specifically requesting comments on the extent to which a rule requiring the peer reviewers to specifically select and review contested audits would contribute to the effectiveness of peer review. The Commission also seeks comment on the nature and extent of the possible impact of such a rule on litigation.

The Commission also wishes to examine, and is specifically requesting comment on, whether a different approach to the review of contested audits would better contribute to improvement in the quality of audits. For example, if the Commission were to decide that the review of contested audits is appropriate, it could instead require PROs to establish a function, similar to the current AICPA's SIC, but which would, however, specifically review the workpapers for the contested audit to determine whether an indication that a weakness in the accountant's system of, or compliance with, audit quality controls may exist. An accountant which undergoes Commission supervised peer review would instead engage another accountant to perform such a review. The advantage to this approach would be that it would result in a more timely review of contested audits, and thus would allow for more timely implementation of any necessary quality control improvements. Commentators are invited to address whether and why this, or some other approach, is preferable.

Finally, the Commission wishes to consider, and is requesting comments on, whether, and to what extent, the concerns over the potential effect on litigation discussed above would be alleviated by the inclusion in any rule which requires the review of contested audits (whether as a part of the peer review or an SIC-type function) of a provision that, for the purpose of the review, the reviewer is simply to assume that the plaintiffs' allegations are correct, and, based on that assumption,

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[44] SECPS peer review standards state: "In that connection, the review team should discuss with the reviewed firm whether litigation, proceedings, or investigations (reported to the SIC) commenced since the date of the firm's last peer review involve the same offices, industries, audit areas, or engagement personnel involved in such matters in the recent past, and whether the firm has considered any such patterns in the scope of its own inspection or other internal review programs. The review team, giving due regard to the fact that such litigation, proceedings, and investigations will ordinarily involve unproven allegations, should consider this information in setting the scope of the review." (SECPS Manual, p. 2-12 and 2-13.)

SECPS peer review standards also state: "A reviewed firm may have legitimate reasons for not permitting the working papers for certain engagements to be reviewed. For example, the financial statements of an engagement selected for review may be the subject of litigation or investigation by a governmental authority, or the firm may have been advised by a client that it will not permit the working papers for its engagement to be reviewed. The review team should satisfy itself as to the reasonableness of the explanation; if the team is not satisfied, the matter should be reported to the reviewed firm's managing partner, and the review team should consider what other action may be appropriate in the circumstances. If the engagements so excluded from the review process are few in number and the review team concludes that the engagements so excluded do not materially affect the review coverage, then the review team ordinarily would conclude that the scope of the review had not been unduly restricted. In order to reach such a conclusion, the review team should review other engagements in a similar area of practice and review other work of supervisory personnel who participated in the excluded engagements." (SECPS Manual, p. 2-13.)

[45] In September 1986, the SECPS Executive Committee appointed a task force to re-evaluate the objectives, operations and procedures of the SIC and the nature of the information provided to the Commission and the public on the SIC's activities. The task force presented its preliminary recommendations to the Executive Committee on March 4, 1987. The Executive Committee is expected to consider and take action on the task force's final report in April, 1987.

is to reach a conclusion as to whether the circumstances indicate weaknesses in the reviewed accountant's system of quality control policies and procedures. This approach, which may affect the relevance of the peer reviewer's observations in private litigation, was utilized in several peer reviews conducted prior to the formation of the SECPS pursuant to settlements of administrative proceedings between accountants and the Commission.[46]

B. Alternative Methods of Obtaining Peer Review

Peer review programs, to be effective, require an organization comprised of, or employing, persons trained in accounting and auditing. This is necessary to assure that adequate peer review standards, policies and procedures are established and followed, and to evaluate the results of peer reviews and determine whether quality control weaknesses identified in peer reviews are being adequately corrected. Also, oversight by representatives of the public interest is necessary to provide credibility through an independent evaluation and report to the public of the effectiveness of private-sector quality control programs.

Both functions can be performed either directly by the Commission or by the private sector (subject to Commission oversight). The private sector approach currently embodied in the SECPS and POB structure has proved both effective and efficient, and the Commission believes that private-sector supervision should be an available alternative under mandatory peer review. Therefore, the proposed rules provide that an accountant may satisfy the peer review requirement by participating in the peer review program of a PRO. The functions a PRO must perform for it, and the peer review performed under its auspices, to be acceptable are discussed under "Requirements for PROs."

On the other hand, the Commission recognizes that some accountants may not want to participate in the peer review program of any of the PROs formed, and therefore is proposing an alternative means of obtaining the required peer review. As previously stated, the function performed by a PRO (and its related public interest representatives) can also be performed by the Commission. Therefore, the proposed rules provide that an accountant may elect to obtain its peer review outside the auspices of a PRO, in which case the peer review would be directly supervised by the Commission, through the Office of the Chief Accountant ("OCA"). This method of undergoing peer review is discussed under "Commission Supervised Peer Reviews."

C. Requirements for PROs

The proposed rules specify the functions a PRO must perform for the PRO, and the peer reviews performed under its auspices, to be acceptable.

A PRO meeting the requirements of the rule would be required to cause the peer reviews performed under its auspices to be conducted in accordance with the previously discussed proposed peer review standards. The purpose of those standards is to insure that the objectives of peer review are met. To accomplish this, PROs would be required to establish peer review policies and procedures which meet or exceed the requirements of the peer review standards.

A PRO would require the accountants participating in its program to submit to it their peer review report, including any supplemental document describing the deficiencies in or containing suggestions for improvements in the accountant's system of, or compliance with, audit quality controls (collectively referred to herein as the "peer review report"), together with a description by the reviewed accountant of the actions taken or planned to correct any weaknesses identified in the report.

The proposed rules do not mandate that a PRO require a reviewed accountant to take appropriate actions to correct any weaknesses identified in the report, but rather require the PRO to determine whether the corrective actions taken or planned are appropriate. A PRO would be required to notify the Commission in writing [47] if it determines that the reviewed accountant has failed to take or plan [48] appropriate actions to correct [49] any deficiencies in the system of, or compliance with, audit quality controls which caused that system to fail to provide a reasonable assurance that audits are conducted in accordance with GAAS.

While the proposed rule would require PROs to determine the adequacy of a reviewed accountant's corrective actions, it would not give PROs the authority to prohibit an accountant from certifying financial statements to be filed with the Commission due either to an accountant's failure to undergo the required peer review or failure to take or plan steps to adequately correct any material weaknesses in its system of, or compliance with, audit quality controls. A PRO would not, however, be prohibited from imposing sanctions upon an accountant, but such sanctions would have to be imposed based on the authority voluntarily granted to the PRO by the accountants subject thereto. The authority to determine that the financial statements examined by an accountant would not meet the Rule 1–02(f) definition of "certified" because of that accountant's lack of an adequate system of, or compliance with, audit quality controls would rest solely with the Commission.

Finally, the PRO would be required to submit to the Commission and make available to the public [50] the peer review reports and the reviewed accountant's response thereto submitted to the PRO.

As previously stated, peer review, to be credible, must also be overseen by representatives of the public interest as well as persons trained in accounting and auditing. While both functions can be performed by the Commission for

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[46] *See, e.g.*, Accounting Series Release No. 209, *In the Matter of S.D. Leidesdorf & Co., Kenneth Larson, Joseph Grendi* (February 16, 1977).

[47] PROs would be required to review the peer review reports and accountants' responses thereto, and to make any required notifications to the Commission, within 45 days of the receipt of the peer review report. In this regard, the peer review standards included in the proposed rule would require PROs to establish policies requiring the completion of the reviews within specific time periods. Absent such a requirement, an accountant could seek to postpone such a determination and notification by delaying the completion of its peer review.

[48] The Commission recognizes that the time necessary to implement certain corrective action may preclude complete implementation prior to the submission to the PRO of a reviewed accountant's response to the peer review report, and that as a result the response can only indicate that such actions are planned. In this regard, the Commission would expect that a PRO, in evaluating the adequacy of a reviewed accountant's response, will generally expect corrective action to be taken on as timely a basis as is practical. Additionally, the peer review standards contained in the proposed rule would require the policies and procedures established by the PRO to contain guidelines for determining in what circumstances a reviewed accountant should be revisited to determine that the planned actions have been taken.

[49] The corrective actions contemplated include both the improvements in its system of and/or compliance with audit quality controls that a reviewed accountant takes or plans to take and other, usually interim, corrective measures such as the scheduling of a special or accelerated peer review or the hiring of an outside consultant to review audit reports, accompanying financial statements and/or related workpapers. Therefore, a report to the Commission would be required where the PRO believed it was necessary, but the reviewed accountant refused, to take interim measures notwithstanding other corrective actions.

[50] The requirement for public availability would be satisfied by the PRO making the documents available for public inspection and copying at its headquarters and furnishing copies by mail upon written request.

peer reviews conducted under its direct supervision, PROs will generally be comprised of accountants in public practice and who therefore cannot themselves perform the public oversight function. For this reason, the proposed rule would require that the activities of a PRO be overseen by a body of not less than three independent individuals appointed to represent the public interest. The proposed rule would define an independent individual as one who is not affiliated with any accountant which undergoes its peer review under the auspices of the related PRO. The Commission is specifically requesting comments on this definition.

This oversight body shall evaluate the effectiveness of the PRO's peer review program and the PRO's compliance with the Commission's requirements. This body would be required, at least annually, to report to the Commission and to the public on its assessment of the effectiveness of the PRO's peer review program and the PRO's compliance with the stated requirements of a PRO.

The proposed rule does not specify the organizational form or structure to be utilized by a PRO, and no specific form or structure would required. Any organization which performs the functions required of a PRO by the proposed rule would be acceptable.

D. Commission Oversight of PROs

The Commission would oversee the peer review process through its oversight of the PROs and the public oversight bodies. Such oversight would include, to the extent the Commission deems necessary, periodic reviews [51] of the activities of both groups, including meetings with their representatives and the review of their written policies and procedures, to determine that the rule's requirements for the organization and activities of each group are being met.

In connection with the oversight of its activities, a PRO would be required to grant access to peer review workpapers to the Commission. The Commission's review of the peer review workpapers would permit it to judge the efficacy of a PRO's peer review program and to determine that the requirements of the rule are being met. Just as the Commission's previous conclusions concerning the efficacy of the SECPS's program have been reached without the review of all peer review workpapers, it would usually not be necessary for the Commission to review all peer review workpapers to judge the efficacy of a PRO's program or its compliance with the Commission's requirements. However, all workpapers would be available to the Commission. Additionally, a PRO would be required to provide to the Commission, upon its request, the workpapers for a specific peer review. Accordingly, a PRO would be required to retain all peer review workpapers for a period of 180 days after the submission of the related peer review report to the Commission and, additionally, to retain indefinitely the workpapers for any specific peer review if advised to do so by the Commission.

If it appears to the Commission that a PRO is not satisfying the requirements for a peer review organization set out in the peer review rules, the Commission may issue a preliminary determination that the PRO fails to meet those requirements, and the peer reviews conducted under its auspices subsequent to that determinations would, therefore, fail to satisfy the peer review requirement. The Commission's preliminary determination would be based on a review of the PRO's policy and procedures or the application of such policies and procedures in the conduct, supervision or review of peer reviews, and any other relevant and available information. A PRO may be considered to have failed to satisfy the requirements of the rules if deficiencies in the PRO's policies or procedures or their application in the conduct of peer reviews causes (or a planned change in a PRO's policies and procedures would cause) peer reviews conducted under the auspices of that PRO to fail to meet the objectives and standards of in the rule, or if the PRO is otherwise failing to meet the requirements of the rule.

Such a preliminary finding would become final fifteen calendar days after its delivery to the PRO unless, during that period, the PRO filed with the Commission a petition indicating its intention to file a written statement demonstrating how it satisfies (or how, after a planned change, it would satisfy) the PRO rule requirements. The PRO would be required to file such a written statement within fifteen days after the filing of the petition. To be successful, the PRO would be required to make a showing satisfactory to the Commission that the PRO's policies and procedures, or their application in the conduct of peer review, do cause (or, in the case of planned changes in the PRO's policies and procedures, would cause) peer reviews conducted under its auspices to meet the objectives and standards of the rule, or that the PRO is otherwise complying with the requirements of the rule.

The Commission would consider such a written statement within thirty calendar days of its receipt. If a satisfactory showing is made, no final determination would be issued. If the PRO fails to make a satisfactory showing, the Commission would issue a final order determining that the PRO fails to meet the requirements of the rule.

The final effectiveness of a Commission determination, whether issued after the consideration of a PRO's written statement or due to the lapse of the fifteen day period after the delivery of a preliminary finding, would not affect the status of peer reviews performed under the auspices of the PRO for which the peer review reports were submitted to the Commission prior to the effective date of the determination. Additionally, in order not to create an undue hardship upon an accountant whose peer review was either being conducted under the auspices of the PRO at the date of such a determination, or whose peer review had been recently completed and submitted to such PRO which in turn had not yet submitted it to the Commission, the proposed rule would allow the Commission to accept, subject to such terms and conditions as the Commission may specify, such peer review submitted to it after the date of a final determination as meeting the requirement of the peer review rule.

A PRO determined not to meet the requirements of the rule would be allowed, no more than once annually, unless the Commission allows otherwise, to apply for a redetermination.

E. Commission Supervised Peer Reviews

Accountants which desire not to participate in the peer review program of a PRO may, instead, undergo a peer review in which the Commission performs the functions of a PRO and therefore directly supervises the peer review. The following describes the manner in which these peer reviews would be conducted under the proposed rule.

An accountant choosing this method of obtaining peer review would select a peer reviewer meeting the qualifications for peer reviewers set forth in the peer review standards. The accountant would advise the OCA of the peer reviewer selected and provide sufficient information to support the position that the accountant selected meets the qualifications for a peer reviewer.

[51] The Commission would make an initial determination as to the acceptability of each PRO and its respective public oversight body before the commencement of peer reviews under its program on the basis of its written policies and procedures.

The peer reviewer, once selected, would be required to prepare detailed policies and procedures to be used in performing the peer review. Prior to the commencement of the review the policies and procedures would be submitted to OCA, which would determine whether they are adequate to provide for compliance with the peer review standards.[52]

The peer reviewer would also advise OCA of the expected dates for the peer review, so that OCA could, at its discretion, monitor and/or test the work and attend any conferences between the reviewer and reviewed accountant concerning the progress and results of the review. At the completion of the review OCA would, to the extent it deemed necessary, review the work of the peer reviewer to determine that it complied with peer review standards, policies and procedures and was therefore sufficient to meet the objectives of peer review.

The peer review report and the reviewed accountant's response indicating the actions planned or taken to correct any weaknesses identified in the report would be submitted directly to OCA, which would review the adequacy of the accountant's corrective actions. The Commission would make these reports (including any accompanying letter) and the reviewed accountants' responses available to the public.

F. Scope of Requirement

The proposed rule would amend the definition of "certified" contained in Rule 1–02(f) of Regulation S–X to indicate that financial statements, to be certified, must have been examined by an independent public or certified public accountant which, as of the date of the completion of the examination,[53] was in compliance with the requirements for peer review and audit quality controls.[54]

In general, the proposed rule is intended to apply to all financial statements which are required to be certified which are included in documents filed with the Commission. The proposed rule does, however, specifically exempt financial statements examined by foreign auditors, accountants certifying certain financial statements of businesses acquired or to be acquired filed pursuant to Rule 3–05 of Regulation S–X or other similar rules, and accountants certifying the financial statements of brokers or dealers filed pursuant to Rule 17a–5 under the Exchange Act.

Foreign auditors certifying either the financial statements of foreign private issuers or financial statements filed pursuant to Rule 3–09 of Regulation S–X (separate financial statements of subsidiaries not consolidated and 50 percent or less owned persons) would be exempt from the rule. The proposed rule would also not apply to foreign auditors upon whose work another auditor relies and whose report is therefore included in a filing pursuant to Rule 2–05. The Commission encourages foreign auditors of registrants to undergo peer review, and similarly would encourage the development of peer review programs by the accounting professions of countries whose issuers' securities are offered and traded in the United States. However, the Commission understands that extending mandatory peer review requirements to foreign auditors is not practical at this time.[55]

The proposed rule would also exempt accountants certifying the financial statements of businesses acquired or to be acquired if the company acquired or being acquired is not subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act.[56] While the quality of the audits of such financial statements is important, requiring peer review in these circumstances could impair the ability of privately-held companies to merge with or be sold to registrants. Therefore, the Commission believes that an exemption for these circumstances is warranted.

Also exempt under the proposed rule would be accountants certifying the financial statements of brokers or dealers filed pursuant to Rule 17a–5 under the Exchange Act. The Commission's tentative decision to exempt these accountants is based on its belief that extending mandatory peer review to those reports involves different cost and benefit considerations.

Every broker or dealer (with defined exceptions) registered under Section 15 of the Exchange Act must file an audited financial statement with the Commission within 60 days following its year-end. Rule 17a–5 requires the audit of such financial statements to be performed in accordance with GAAS but, unlike Rule 2–02(b) of Regulation S–X, specifically indicates certain objectives of the audit and certain considerations as to the extent and timing of audit procedures.[57] Additionally, the monitoring of a broker's or dealer's financial condition and its adherence to Commission rules is augmented by the periodic inspections performed by the self-regulatory organizations ("SROs") and any examinations conducted by the Commission.

The proposed rules do not exempt accountants certifying the balance sheets of investment advisers which are required to be filed with the Commission. While both investment advisers and broker-dealers are subject to periodic examinations, the examinations of broker-dealers performed by the SROs or the Commission are more frequent and focus very heavily on the firms' compliance with the rules designed for the protection of customers. For example, broker-dealers which engage in a general securities business are generally examined on an annual basis, and those which do not hold customers' funds or securities are examined at least every two to three years. Those examinations include the testing of the firms' compliance with all Commission and SRO financial responsibility rules, including the currency and accuracy of books and records, safekeeping and segregation of securities, clearing and bonding arrangements, verification of financial reports filed, and the net capital and customer reserve fund computations to assure that there are sufficient liquid assets to cover indebtedness to customers. On the other

[52] Alternatively, the peer reviewer could utilize the policies and procedures of any acceptable PRO.

[53] SAS No. 1 (AU section 530.01) provides that "[g]enerally, the date of the completion of the field work should be used as the date of the independent auditor's report." Therefore, the date of the accountant's report would indicate the date of the completion of the examination for the purposes of the proposed rule.

[54] The proposed rules also include amendments to Item 21(a)(2) of Form S–18 and Schedule G of Form ADV to indicate that the requirements of Rule 1–02(f) and Article 1A of Regulation S–X apply to those forms. Article 1 of Regulation S–X presently does not apply to financial statements included in filings on those forms. Form ADV is used for the registration of investment advisers with the Commission and with the states. The proposed amendment to Schedule G would be limited to the balance sheets of investment advisers required to be filed with the Commission. The Commission will bring the proposal to the attention of the North American Securities Administrators Association for its consideration of whether the proposed amendment should also apply to filings with the States.

[55] The Commission's staff has historically made certain inquiries of foreign auditors concerning their professional qualifications and training, the professional standards in their respective countries and the procedures utilized to insure the necessary compliance with U.S. GAAS.

[56] Those financial statements are required, dependent on the specific circumstances, by Rule 3–05 of Regulation S–X, Item 17(b)(7) of Form S–4, Item 17(b)(5) of Form F–4, Item 21(d) of Form S–18, Item 6(d) of Form N–14 or Item 14(b)(3)(ii)(A) of Schedule 14A.

[57] *See*, Securities Exchange Act Rules 17a–5 (g) and (h).

hand, investment advisers who hold customers' funds or securities are examined no more frequently than once every five years, and the scope of those examinations is less detailed. As a result, the benefit to be derived from the mandatory peer review of the accountants of broker-dealers may not outweigh the associated costs, while such may not be the case with respect to the accountants for investment advisers.

The current definition of certified financial statements contained in Rule 17a–5(i)(5) refers to the definition in Rule 1–02 of Regulation S–X. To achieve the proposed exemption of accountants certifying the financial statements of brokers or dealers, the proposed rules include an amendment to Rule 17a–5(i)(5) that would exclude the peer review requirement and the related requirement for audit quality controls from the Rule 17a–5 definition. Should the Commission decide, upon the adoption of a final rule, to include within the scope of the rule the accountants certifying the financial statements filed pursuant to Rule 17a–5, such inclusion would be accomplished by not adopting the proposed amendment to Rule 17a–5(i)(5), in which case the requirements of amended Rule 1–02(f), and its companion Article 1A of Regulation S–X would apply to these filings.

The Commission is specifically requesting comment on the appropriateness of the proposed exemptions for foreign auditors and for accountants certifying certain financial statements of businesses acquired or to be acquired. Comments are also requested on the proposed exemption for accountants certifying the financial statements of broker-dealers filed pursuant to Rule 17a–5 and the proposed inclusion of the accountants for investment advisers. Finally, the Commission specifically requests comments discussing other groups of accountants, financial statements or registrants for which an exemption may be warranted.

G. Transition Provisions

The Commission would allow approximately 18 months after the adoption of any final rule for the completion of initial peer reviews. The proposed transition provisions have been designed to eliminate instances in which a registrant would be required to have its financial statements reaudited by another accountant due to the prior accountant's decision not to, or failure to, comply with the rule. Since the proposed rule would define certified financial statements as those examined by an accountant which, as of the date of the completion of the audit, was in compliance with the requirement for peer review, financial statements certified prior to the effective date of the rule would continue to satisfy the requirements for certified financial statements regardless of whether an accountant elects to comply with the rule and undergo a peer review when the rule becomes effective. Similarly, if an accountant initially complies with the rule but later terminates, or is determined by the Commission not to be in compliance, financial statements certified prior to the date of such termination or determination shall continue to be acceptable.

The transition provisions relating to accountants that first become subject to the rule after its effective date are similarly designed to reduce the need for reaudits, reduce delays in initial public offerings or initial filings or unduly restrict an accountant's ability to accept a registrant as a new client. The proposed rule provides that where an accountant becomes subject to mandatory peer review due to an initial filing by an existing client or the acceptance of a registrant as a new client, the accountant shall have 18 months from the date of the initial filing or the acceptance of the client to complete its initial peer review. During that 18 month period (or until the initial peer review is completed, if sooner), the financial statements certified by that accountant which are to be filed with the Commission, together with the related accountant's report and audit workpapers, would have to be reviewed by an accountant (firm or individual) which meets the qualifications for a peer reviewer.

The proposed rule also includes a transition provision relating to those instances in which filings include financial statements for periods during which a registrant was not subject to the reporting requirements of the Exchange Act, and those financial statements have been certified for different periods by different accountants. In those instances, only the accountant certifying the financial statement for the most recent fiscal year need comply. In this way, a company making an initial filing whose accountant declines to become subject to mandatory peer review would be required to engage another accountant only with respect to the latest fiscal year to be included in the filing. The financial statements for the earlier periods would, for the initial filing, and any subsequent periodic filings, meet the Regulation S–X definition of certified without the previous accountant's compliance with the peer review requirement.

The proposed rules do not include provisions specifying whether the merger or dissolution of an accounting practice would necessitate a new peer review. Tentatively, the Commission believes that those matters should be the subject of the peer review policies and procedures established by a PRO or, with respect to accountants whose peer reviews are directly supervised by the Commission, should be decided on a case-by-case basis.

Generally the Commission would only require a new peer review of accounting practices resulting from the dissolution of a firm which had undergone peer review within the last three years if a new firm included a significant number of professionals who were not associated with the previous firm or a new firm did not adopt a system of audit quality control practices and procedures which was substantially identical to that utilized by the previous firm.

Similarly, a new peer review would generally not be necessary upon the merger of two accounting practices if the combined firm adopted a system of audit quality control practices and procedures which had been peer reviewed within the last three years, and if that peer review had indicated that the system included adequate policies and procedures concerning the pre-merger review of the quality of the accounting and auditing practice of another accountant in a potential merger.

Commentators are specifically requested to discuss these guidelines, and whether the establishment of specific policies concerning the merger and dissolution of accounting practices should be a function of the PROs or should be included in any final rules adopted by the Commission.

H. Effects of Failure to Comply

The proposed rules would require that, for financial statements filed with the Commission to comply with the Regulation S–X definition of "certified", the accountant examining and reporting on the financial statements must (i) be in compliance with the peer review requirement and (ii) have established and be complying with an audit quality control system meeting the requirements of GAAS. Failure to satisfy either requirement would result in the financial statements not being considered to be "certified."

In determining whether an accountant has satisfied these two requirements, the proposed rule provides that if the accountant satisfies the first

requirement (compliance with the peer review rule), there will be a presumption that the accountant has satisfied the second (the accountant's maintenance of and adherence to an adequate quality control system). The Commission, however, after reviewing, to the extent it deems necessary, a peer review report, the accompanying letter and the accountant's response thereto, the peer review workpapers, and other relevant information brought to its attention, may determine that the presumption has been negated and that, despite undergoing a peer review, an accountant lacks an adequate quality control system or has not been adhering to such a system.

It should be noted that the proposed rule does not premise the presumption on an accountant having had a peer review, but on compliance with the peer review rule. If an accountant therefore has not had a peer review, but instead is exempt from the rule or has complied with one of the transition provisions, then the accountant will be deemed to have satisfied the requirements of the peer review rule and the presumption would apply. For example, if an accountant becomes subject to the peer review rule because financial statements the accountant has audited are filed with the Commission for the first time, the accountant will have complied with the peer review rule by having its report and workpapers, and the financial statements of the registrant, reviewed by an accountant meeting the requirements to be a peer reviewer. This compliance will trigger the presumption that the accountant has met the requirement for having and using quality controls meeting the requirements of GAAS.

As noted above, the accountant's failure to comply with either the peer review requirement or the requirement to maintain and adhere to adequate quality controls would result in financial statements examined by that accountant failing to meet the requirements to be "certified" as defined in Rule 1–02(f) of Regulation S–X. An accountant that fails to undergo a required peer review would clearly fail to satisfy the peer review rule and, without any Commission action, the financial statements thereafter examined by that accountant would not be considered "certified". Further, when an accountant has undergone a peer reviews there may be situations where the results of the peer review, or other information brought to the Commission's attention, indicate that the presumption described above may have been negated. Questions may be raised as to the accountant's quality control system, its adherence to that system, or the adequacy of the accountant's efforts to correct any deficiencies in, or compliance with, its system so that there will be the required reasonable assurance of the accountant conforming with GAAS in its audit engagements. Under the proposed rule, therefore, the Commission would have the discretion to preliminarily determine whether the accountant has and adheres to the necessary quality controls.

OCA, in determining whether to recommend that the Commission issue a preliminary determination that an accountant has failed to comply with the proposed rule's requirement for the establishment of and adherence to audit quality controls meeting the requirements of GAAS, would generally review the peer review report, the accompanying letter from the peer reviewer, the accountant's response thereto, the peer review workpapers and any required notification from a PRO and such other information as may be available to it to consider whether (i) the peer review has identified material weaknesses in an accountant's system of, or compliance with, audit quality controls which cause there to be a lack of a reasonable assurance of compliance with GAAS and (ii) the accountant has failed or refused to take or plan adequate actions to correct such material deficiencies.

The nature of the deficiencies in an accountant's system of, or compliance with, audit quality controls which might cause OCA to refer a matter to the Commission are those which, because they result in the lack of a reasonable assurance of the accountant's compliance with GAAS, should cause the peer reviewer to issue other than an unqualified opinion. Historically, the majority of the unqualified opinions issued in SECPS peer reviews have been accompanied by letters in which the peer reviewer noted deficiencies in the accountant's system of, or compliance with, audit quality controls which, in the peer reviewer's opinion, did not cause the lack of the reasonable assurance required by GAAS. The Commission, based on its experience in reviewing the work of the SECPS, believes that the peer reviewers' characterizations of those deficiencies as not being of the nature requiring a qualification of the peer review opinion, has generally been appropriate; and that such deficiencies would not, under the proposed rule, be of the nature which might cause OCA to refer a matter to the Commission. Thus, OCA, in determining whether to refer a matter to the Commission, would attach significant importance to the peer reviewer's overall opinion on the reviewed accountant's compliance with the audit quality control requirements of GAAS and its characterization of any weaknesses in the accountant's audit quality controls.

Additionally, OCA would only refer a matter to the Commission if it believed that any material deficiencies were not being adequately and diligently corrected. PROs would be required to determine whether or not an accountant has taken or planned adequate corrective actions, and to notify OCA when an accountant has failed or refused to do so with respect to material quality control deficiencies. OCA would place considerable weight on the opinion of a PRO as to acceptability of planned corrective actions and as to adequacy of any interim measures (for example, the use of an outside consultant) to be used to provide a reasonable assurance of compliance with GAAS pending the completion of corrective actions.[58]

Under the proposed rule, the Commission would have the discretion to issue a preliminary determination that an accountant was not in compliance with the rule, and therefore that financial statements that the accountant examined would not be "certified" within the meaning of Regulation S–X. Such a preliminary determination would only be issued where it appears to the Commission that an accountant's system of audit quality controls does not meet the requirements of GAAS or that an accountant's compliance with its system does not provide reasonable assurance that audits will be conducted in accordance with GAAS.

If the Commission issues such a preliminary determination, it will become final fifteen days after it is served on the accountant, unless the accountant files a petition with the Commission for a hearing on the issue. If no petition is filed and the preliminary determination becomes final, then financial statements examined by that accountant would no longer be considered "certified" within the meaning of Regulation S–X. The Commission recognizes, however, that a change on such short notice in the accountant's ability to have its examination of a registrant's financial statements qualify as a "certification" of those financial statements could impose

[58] As previously discussed, the Commission would also expect a PRO to consider the adequacy of any necessary interim measures in determining the overall adequacy of a reviewed accountant's taken or planned corrective actions.

a hardship on registrants that are in the process of having an audit conducted by that accountant. For this reason the Commission, under the proposed rule, would have the discretion to accept as "certified" financial statements filed after its final determination in order to permit the accountant to complete any or all audits in progress at the date of the Commission's determination. The acceptance of these financial statements, however, would be subject to such terms and conditions as the Commission may consider appropriate. Generally, the Commission would only permit such financial statements to be filed within 180 days of the Commission's determination, and the accountant's report, together with the related workpapers and financial statements for each audit, would be required to be reviewed by an accountant meeting the qualifications of a peer reviewer.

If the accountant files a petition for a hearing before the expiration of the fifteen-day period following service of the preliminary determination, then the determination would not become final and the financial statements examined by the accountant would continue to be considered "certified" pending completion of the hearing. These proceedings would be conducted in accordance with the Commission's Rules of Practice, 17 CFR Part 201. Should the Commission find that the accountant does not satisfy the quality control or peer review requirements in the proposed rule, then future financial statements examined by that accountant would not be considered to be "certified". As with the situation where no petition for a hearing is filed, however, the Commission may, under similar terms and conditions, permit the accountant to complete audits in progress at the conclusion of the proceedings.

At any time following the final determination that an accountant's examination does not satisfy the requirements for a "certification" of financial statements, the accountant may file an application for a new determination by the Commission finding that the accountant now satisfies these requirements. The application would be accompanied by an affidavit, signed by the applicant, explaining the accountant's satisfaction of the quality control and peer review requirements. If the applicant is an accounting firm, the affidavit would be signed by someone authorized to act on behalf of the firm and who has personal knowledge of the information and statements made in the affidavit. Only one application would be permitted within any twelve month period unless the Commission, in its discretion, permits an additional application to be filed.

The Commission specifically requests comment on this method of implementing the rule and suggestions for alternative methods.

I. Effects on Registrants

The proposed rules are not expected to impose a significant cost on registrants.

The Commission is unable to determine to what extent the additional costs imposed on accountants by a mandatory peer review requirement would be passed on to registrants through an increase in audit fees. However, the information available concerning the costs to be incurred by accountants as the result of mandatory peer review suggests that such costs, even if totally recovered from clients, would generally not cause a significant increase in audit fees.

A registrant may be forced to change accountants if its current accountant declines to become subject to mandatory peer review. The Commission does not believe that this would impose a significant cost on registrants, but specifically requests comments on the costs a registrant would incur in these circumstances.

If the proposed rule is adopted, registrants would be limited to choosing an accountant which was willing to comply with the rule. In this regard, the Commission is specifically requesting comments on whether the proposed rule, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act.

A registrant's obligation to determine its accountant's compliance with the proposed rule would not differ from a registrant's present obligation to determine that its accountant is appropriately qualified under Article 2 of Regulation S–X. Presently an accountant, by its signing of the accountant's report, represents that it has complied with the licensing and independence requirements of Rule 2–01 of Regulation S–X. An accountant would represent its compliance with the proposed rules, if adopted, in the same manner.

IV. Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an initial regulatory flexibility analysis of the economic impact which the amendments proposed herein, if adopted, will, have on small entities. This analysis is attached to this release.

V. Requests for Comments

The Commission invites written comments from accountants, preparers and users of financial statements, and other interested parties on any and all aspects of the proposed rules. The Commission is specifically requesting commentators to include:

(a) Comments on the effectiveness of peer review in improving audit quality and the reliability of financial statements of the type described under "Benefits of Peer Review". The Commission is especially interested in receiving comments from accountants who have undergone or performed peer reviews discussing the benefits derived from peer review and its effectiveness in improving the quality of audits;

(b) Information concerning the number and types of accountants which would be affected by the inclusion of investment advisers as requested in footnote 4;

(c) Information on the costs which accountants would incur as a result of mandatory peer review of the type requested under "Costs of Peer Review";

(d) Discussions of the benefits and problems associated with a specific requirement for the selection and review of contested audits in response to the questions raised under "Peer Review Standards";

(e) Comments on the proposed or other exemptions as requested under "Scope of Requirement";

(f) Comments on the proposed transition provisions, including the issues relating to the merger or dissolution of accounting practices;

(g) Information on the potential costs to registrants and potential competitive impact as requested under "Effects on Registrants" and "Costs of Peer Review";

(h) comments on the proposed method, as described under "Effects of Failure to Comply", of sanctioning an accountant's failure to take or plan adequate actions to connect any material deficiencies in their system of, or compliance with, audit quality controls; and

(i) Comments on the specific requirements for PROs, public oversight bodies (including the definition of an independent individual) and peer review standards contained in the text of the proposed rule.

The Commission also requests that commentators compare generally the costs and benefits that would result from mandatory peer review, including whether mandatory peer review is necessary or advisable given the level of participation in the current voluntary

program indicated by the statistics included in footnote 4.

In this regard, the Commission also requests that commentators discuss means other than mandatory peer review by which the Commission could improve the quality of registrant audits or provide information to investors on whether accountants have been peer reviewed. In particular, the Commission requests comments on mandatory disclosure of accountants' peer review status as an alternative to mandatory peer reviews. On July 19, 1985, the Commission, in connection with proposed amendments to its proxy rules,[59] proposed an amendment to Item 9 of Schedule 14A that would have required that a registrant disclose whether its independent accountant was a member of an organization that had a peer review program and an independent oversight function.[60] On November 4, 1986, the Commission, in adopting final rules amending its proxy requirements, did not adopt the proposed disclosure requirement.[61] Instead, the Commission announced its intention to "reconsider this proposal after the completion of related private sector initiatives and a review of the concept of mandatory peer review."[62]

Accordingly, the Commission intends to consider, and commentators are invited to address, the advantages and/or disadvantages of mandatory peer review compared to those of a disclosure requirement,[63] or any other possible course of action. Commentators are specifically asked to address (i) whether a disclosure requirement would result in a substantial increase in the number of accountants voluntarily undergoing peer review, and whether a significant percentage of accountants would be likely to continue to forgo peer review; (ii) whether an accountant's peer review status is an appropriate subject for mandatory disclosure in registration statements, periodic reports or proxies, (*i.e.* would such information be of significant value to investors and, if such information would not be useful, why mandatory peer review would lead to significant benefits for investors); (iii) the nature of the further disclosure obligation, if any, such a requirements would impose on registrants if an accountant received a qualified peer review report; and (iv) the relative costs and benefits of a mandatory disclosure requirement in comparison with a mandatory peer review requirement.

[59] See, Release No. 33-6592 (July 19, 1985) [50 FR 29409].

[60] The proposal would have required disclosure of whether or not the principal accountant was subject to peer review, whether or not a peer review had taken place and the date of the most recent peer review report. Further, the proposing release stated that if the peer review report was qualified, registrants needed to consider disclosing that fact and possibly disclosing the nature of the qualifications and the status of the effort to correct deficiencies.

[61] *See* Release No. 33-6676 (November 4, 1986) [51 FR 42048].

[62] *Id.*

[63] The Commission, in considering the alternative of a disclosure requirement, will also consider disclosure standards that differ from the specific requirements proposed in Release No. 33-6592. Among the alternatives on which the Commission seeks comment is an approach that would require disclosure of whether the accountant was a member of an organization which had a peer review program, but would not require disclosure concerning the date or results of the latest peer review. Other forms of disclosure, other that pursuant to the proxy rules, will also be considered; for example, disclosure within or accompanying the accountant's report of whether the accountant has undergone peer review. Commentators should therefore address any form of disclosure requirement which they believe would be appropriate.

List of Subjects in 17 CFR Parts 210, 239, 240, and 279

Accounting, Investment advisers, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

In accordance with the foregoing, Chapter II of Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 is revised to read as follows:

Authority: Secs. 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933, 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25)(26); secs. 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78l, 78m, 78n, 78o(d), 78w(a); secs. 5(b), 10(a), 14 and 20(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79e(b), 79j(a), 79n, 79t(a); secs. 8, 20, 30, 31, and 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-8, 80a-20, 80a-29, 80a-30, 80a-37(a); secs. 203, 204 and 211 of the Investment Advisers Act of 1940, 15 U.S.C 80b-3, 80b-4, 80b-11, unless otherwise noted.

2. By revising paragraph (f) of § 210.1-02 to read as follows:

§ 210.1-02 Definitions of terms used in Regulation S-X.

* * * * *

(f) *Certified*—The term "certified," when used to describe financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant that, as of the date of the completion of the examination:

(1) Was in compliance with the peer review requirement of § 210.1A-01; and

(2) Has established a system of audit quality controls meeting the requirements of generally accepted auditing standards and whose compliance with that system provides reasonable assurance that audits will be conducted in accordance with generally accepted auditing standards. For the purpose of this paragraph (f), an accountant satisfying paragraph (f)(1) of this section shall be presumed to have satisfied paragraph (f)(2) of this section, unless otherwise determined by the Commission pursuant to § 210.1A-05.

3. By adding § § 210.1A-01, 210.1A-02, 210.1A-03, 210.1A-04 and 210.1A-05 (new Article 1A) as follows:

Article 1A—Peer Review of Accountants

§ 210.1A-01 Peer Review Requirement.

An accountant certifying financial statements filed with the Commission shall have undergone a peer review of its accounting and auditing practice within the three years prior to the completion of an examination of financial statements filed with the Commission after [18 months after the adoption of this rule]. Such peer review is to be performed either under the auspices of a peer review organization meeting the requirements of § 210.1A-03 or in the manner specified by § 210.1A-04.

(a) The term "accountant" as used in this Article and in paragraph (f) of § 210.1-02 shall, for a firm composed of more than one individual, refer to the firm and not the individual members or employees of the firm.

(b) *Exemptions.* (1) This section shall not apply to foreign accountants (i) certifying financial statements of foreign private issuers, (ii) certifying financial statements filed pursuant to § 210.3-09, or (iii) whose report is included in a filing pursuant to § 210.2-05.

(2) This section shall not apply to accountants certifying only financial statements filed pursuant to § 210.3-05, Item 17(b)(7) of Form S-4, Item 17(b)(5) of Form F-4, Item 21(d) of Form S-18, Item 6(d) of Form N-14 and Item 14(b)(3)(ii)(A) of Schedule 14A where such financial statements are of an entity not subject, as of the date of the filing, to the reporting requirements of

section 13(a) or 15(d) of the Securities Exchange Act of 1934.

(3) Where the filing includes audited financial statements for periods during which a registrant was not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and such financial statements are certified by different accountants as to different fiscal years or periods, this section shall apply only to the accountant certifying the financial statements for the most recent fiscal year.

(4) When an accountant first becomes subject to the provisions of this section by virtue of the filing with the Commission of financial statements certified by that accountant, the financial statements certified by that accountant shall continue to be acceptable for a period of eighteen months pending the completion of an initial peer review. Such eighteen month period shall commence upon the acceptance of a client already required to file certified financial statements with the Commission or the initial filing by an existing client. *However*, during such eighteen month period (or until the completion of an initial peer review, if sooner), each report filed with the Commission, together with the related financial statements and workpapers, shall be reviewed by an accountant meeting the qualifications for a peer reviewer set forth in paragraph (a) of § 210.1A–02.

§ 210.1A–02 Peer Review Standards.

Peer reviews meeting the requirements of § 210.1A–01 shall be conducted pursuant to the following standards.

(a) Accountants (individual and firms) serving as peer reviewers shall be:

(1) Be independent from the accountant being reviewed. For example, (i) material family relationships between those individuals conducting or consulting on the peer review (and, in the case of a peer review conducted by a firm of accountants, the senior management of the reviewing firm) and the accountant being reviewed, (ii) financial interests shared with the accountant to be reviewed, and (iii) reciprocal peer reviews shall, in any such cases, result in the peer reviewer lacking independence.

(2) Currently active at the supervisory level in the practice of public accounting, experienced in matters relating to accounting by, and the auditing of, registrants, and shall have (or be associated with a firm which has) received an unqualified report on its most recent peer review.

(b) The peer review shall cover, at a minimum, the accountant's practice year which most recently ended prior to the completion of the peer review. An accountant may specify, but once specified may not change without an appropriate reason, any consecutive twelve month period as its practice year.

(c) The peer review shall include the study and evaluation of the accountant's quality control policies and procedures for the monitoring of independence from its audit clients within the meaning of § 210.2–01; the assignment of personnel to engagements; consultation within the firm or with other accountants on accounting and auditing questions; the supervision of audit work; the hiring, professional development and advancement of personnel; the acceptance and continuation of clients; and the internal inspection of the accountant's own compliance with its policies and procedures, to ascertain whether such policies and procedures are sufficient to provide a reasonable assurance that the accountant complies with generally accepted auditing standards in the conduct of audit engagements.

(d) The peer review shall include a review of the accountant's compliance with its quality control policies and procedures. That review of compliance shall include the review of auditors' reports issued by the accountant and related financial statements and workpapers for a selection of audit engagements that is representative of the accountant's accounting and auditing practice.

(e) The documentation of the peer review shall be adequate to indicate the work performed by the peer reviewer and the results thereof, to demonstrate that peer review standards and the related policies and procedures have been complied with, and to provide a record of the basis for the peer reviewer's opinion.

(f) (1) Peer reviewers shall issue a report indicating the general scope of the peer review, including any restrictions thereon, and expressing an opinion on whether the reviewed accountant's system of audit quality control, and the degree of compliance with that system, were sufficient to provide reasonable assurance that audits were being conducted in accordance with generally accepted auditing standards. The nature of any exceptions taken shall be clearly set forth.

(2) The peer reviewer shall also issue an accompanying letter describing any deficiencies in the system of, or compliance with, audit quality controls which create more than a remote possibility of noncompliance with generally accepted auditing standards and the effect, if any, those deficiencies had on the peer review opinion. The peer review report shall state whether such a letter has been issued. No letter shall be required if there were no such deficiencies.

(g) The reviewed accountant shall respond in writing to the letter, if any, issued pursuant to paragraph (f) of this section, indicating the corrective action taken or planned or the reason the reviewed accountant disagrees with the peer reviewer's findings and/or believes no corrective actions are necessary.

(h) PROs meeting the requirements of § 210.1A–02 shall determine when a reviewed accountant should be revisited to determine that planned or scheduled corrective actions described in the response required by paragraph (g) of this section have been taken. For peer reviews conducted under § 210.1A–04, the Commission shall make this determination.

§ 210.1A–03 Requirements for peer review organizations.

A peer review organization ("PRO") shall, for the peer reviews performed under its auspices to satisfy the peer review requirement of § 210.1A–01,

(a) Require each accountant which undergoes peer review under its auspices to submit to the PRO, within 15 days after the issuance of the relevant peer review report,

(1) Such report and the peer reviewer's letter, if any, describing the deficiencies in the accountant's system of or compliance with audit quality controls required by paragraph (f) of § 210.1A–02, and

(2) The response required by paragraph (g) of § 210.1A–02 to the peer review report and the peer reviewer's letter, including the accountant's plans to correct any weaknesses or implement any suggested improvements noted therein;

(b) Administer the peer reviews conducted pursuant to its program by:

(1) Establishing specific peer review policies and procedures which provide for peer reviews to be conducted in accordance with the standards set forth in § 210.1A–02;

(2) Reviewing the peer reviews conducted pursuant to its program to ascertain whether they have been performed in accordance with the PRO's policies and procedures; and

(3) Reviewing the peer reviewers' reports and letters and the responses of the reviewed accountants submitted to it to determine whether the corrective actions taken or planned by the

reviewed accountant are adequate. A PRO shall notify the Office of the Chief Accountant of any instances where it, as the result of such review, determines that the reviewed accountant's system of audit quality controls, or its compliance with that system, is materially deficient in that the system and/or the degree of compliance with the system failed to provide a reasonable assurance of the accountant complying with generally accepted auditing standards in the conduct of its audit engagements, and that the reviewed accountant has not corrected such deficiences or, if the deficiencies cannot be immediately corrected, has not established and is not diligently pursuing an adequate plan or schedule for the correction of such deficiencies;

(c) Make the documents submitted to it pursuant to paragraphs (a) (1) and (2) of this section, available for public inspection at its place of business and provide copies of such documents upon written request;

(d) Appoint a body of not less than three independent individuals acceptable to the Commission to represent the public interest in the oversight of the PRO's activities. Such body shall oversee the PRO's activities in complying with the requirements of this section and shall evaluate the effectiveness of the PRO's peer review program. Not less than annually such body shall report to the public and the Commission on the results of its oversight of the PRO's compliance with the requirements of this section and on its assessment of the effectiveness of the PRO's peer review program. For the purposes of this paragraph (d), a person shall not be deemed to be independent if he is affiliated with an accountant whose peer review is performed under the auspices of the PRO;

(e) Be subject to review by the Commission of its activities and the activities of its public interest representatives, including, as the Commission deems necessary, meetings with its representatives and the review of its written policies and procedures. A PRO shall, within 45 days after receiving a peer reviewer's report, submit to the Commission (1) the peer reviewer's report and any accompanying letter required by paragraph (f) of § 210.1A–02, (2) the reviewed accountant's response required by paragraph (g) of § 210.1A–02, and (3) any notification required by paragraph (b)(3) of this section. A PRO shall grant access to the peer review policies and procedures, and to the workpapers documenting the performance of peer reviews, to the Commission. Further, a PRO shall provide to the Commission, upon its request, the workpapers documenting any peer review the Commission may specify. A PRO shall be required to retain, or require the peer reviewer to retain, peer review workpapers for a period of 180 days after the submission of the related peer review report to the Commission, except that a PRO shall retain, or require the peer reviewer to retain, indefinitely the peer review workpapers for any peer review specified by the Commission.

(f) (1) When it appears to the Commission that a PRO is not satisfying the requirements of paragraphs (a) through (e) of this section, the Commission may issue a preliminary determination that the PRO does not meet the requirements of § 210.1A–03.

(2) A preliminary determination by the Commission under paragraph (f)(1) of this section shall become final fifteen calendar days after service by certified or registered mail directed to the last known business address of the PRO, unless within such fifteen day period the PRO files a petition with the Commission requesting the opportunity to submit a written statement to demonstrate that the PRO satsifies the requirements of § 210.1A–03. Such written statement shall be made by affidavit filed within fifteen calendar days after the filing of a petition under this paragraph.

(3) On or before thirty calendar days following the filing of a written statement pursuant to paragraph (f)(2) of this section, the Commission by order shall determine, on the basis of the materials submitted to the Commission by the PRO and the staff, including the staff's response to the PRO's written statement, whether the PRO satisfies the requirements of § 210.1A–03.

(4) Notwithstanding a final determination by the Commission under paragraphs (f) (2) or (3) of this section that a PRO does not satisfy the requirement of § 210.1A–03, the Commission, in its discretion and upon such terms and conditions as it may specify, may determine that any or all peer reviews being conducted under the auspices of such PRO as of the date of the Commission's determination meet the requirements of § 210.1A–01.

(5) The Commission may, on its own motion or upon the application of a PRO that has been determined by the Commission not to satisfy the requirements of § 210.1A–03 pursuant to paragraphs (f) (2) or (3) of this section, issue an order determining that a PRO satisfies the requirements of § 210.1A–03. In the case of an application by a PRO, the Commission shall issue a determination, based on the materials contained in the application and the staff's response, within thirty calendar days following the filing of the application. Each application shall be supported by an affidavit addressing the PRO's satisfaction of the requirements of § 210.1A–03. One original and four copies of the application shall be filed with the Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Each application shall include as exhibits:

(i) A copy of any Commission order naming the PRO issued pursuant to paragraphs (f) (1) or (3) of this section, and

(ii) An undertaking by the PRO immediately to notify the Commission in writing if any information submitted in support of the application, while pending, becomes false or misleading.

(6) A PRO shall not submit an application under paragraph (f)(5) of this section more than once within any twelve-month period, except as the Commission may in its discretion permit.

(7) Action by the Commission under this paragraph (f) shall be taken in accordance with the provisions of Rule 27 of the Commission's Rules of Practice, 17 CFR 201.27, applicable to adjudications under the Securities Exchange Act of 1934, not required to be determined on the record after notice and opportunity for hearing.

§ 210.1A.04 Commission supervised peer review.

Accountants not participating in the peer review program of a PRO meeting the requirements of § 210.1A–03 shall undergo peer review in the following manner:

(a) The accountant shall select a peer reviewer meeting the qualifications set forth in paragraph (a) of § 210.1A–02. The accountant shall inform the Office of the Chief Accountant of the identity of the peer reviewer and submit sufficient information to support the position that the reviewer meets such qualifications.

(b) The peer reviewer shall use peer review policies and procedures which provide for the peer review to be conducted in accordance with the standards set forth in § 210.1A–02. Such policies and procedures shall be reviewed and approved by the Commission prior to the commencement of the peer review.

(c) The peer reviewer shall notify the Office of the Chief Accountant of the expected dates for the peer review so that the Commission may, to the extent

it deems necessary, monitor and test the manner in which the peer review is being conducted, attend conferences between the peer reviewer and the reviewed accountant at which the progress or findings of the review are discussed, and review the peer review workpapers to determine that peer review standards have been complied with.

(d) The peer review report, the peer reviewer's letter, if any, describing the deficiencies in the accountant's system of or compliance with audit quality controls and the reviewed accountant's response thereto required by paragraphs (f) and (g) of § 210.1A–02 shall be submitted to the Office of the Chief Accountant, within 15 days of the issuance of the peer reviewer's report.

§ 210.1A–05 Accountant's Failure to comply with § 210.1–02(f).

(a) When it appears to the Commission that an accountant's system of audit quality controls does not meet the requirements of generally accepted auditing standards or that an accountant's compliance with such system does not provide reasonable assurance that audits will be conducted in accordance with generally accepted auditing standards, the Commission may issue a preliminary determination that the accountant does not satisfy the requirements of § 210.1–02(f)(2). The Commission shall specify the basis for this preliminary determination, which may be based on the accountant's peer review reports, peer reviewer's letters and accountant's responses required by paragraphs (f) and (g) of § 210.1A–02, the peer reviewer's workpapers and any other relevant information which has come to the attention of the Commission.

(b) A preliminary determination by the Commission under paragraph (a) of this section shall become final fifteen calendar days after service by certified or registered mail directed to the last known business or residence address of the accountant, unless within such fifteen day period the accountant files a petition for a determination by the Commission on the record after notice and opportunity for a hearing.

(c) Following the filing of a petition pursuant to paragraph (b) of this section, the Commission by order shall determine, on the record after notice and opportunity for a hearing, whether the accountant satisfies the requirements of § 210.1–02(f)(ii). Proceedings under this paragraph shall be conducted in accordance with the Rules of Practice to the extent that they are not inconsistent with this rule [17 CFR Part 201].

(d) Notwithstanding a Commission determination under paragraph (b) or (c) of this section that an accountant does not satisfy the requirements of § 210.1–02(f)(ii), the Commission, in its discretion and upon such terms and conditions as it may specify, may deem financial statements relating to any or all audits in progress as of the date of such determination to be certified for the purpose of § 210.1–02(f).

(e) The Commission may, on its own motion or upon the application of an accountant that has been determined by the Commission not to satisfy the requirements of § 210.1–02(f)(2) pursuant to paragraph (b) or (c) of this section, issue an order determining that an accountant satisfies the requirements of § 210.1–02(f)(2). In the case of an application by an accountant, the Commission shall issue a determination, based on the materials contained in the application and the staff's response, within thirty calendar days following the filing of the application. Each application shall be supported by an affidavit, manually signed by the applicant, addressing the accountant's satisfaction of the requirements of § 210.1–02(f)(2). One original and four copies of the application shall be filed with the Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Each application shall include as exhibits:

(1) A copy of any Commission order naming the accountant issued pursuant to paragraph (a) or (c) of this section;

(2) A copy of the accountant's most recent peer review report, peer reviewer's letter, and accountant's response, required by paragraphs (f) and (g) of § 210.1A–02;

(3) An undertaking by the applicant immediately to notify the Commission in writing if any information submitted in support of the application, while pending, becomes false or misleading.

(f) An accountant shall not submit an application under paragraph (e) of this section more than once within any twelve month period, except as the Commission may, in its discretion, permit.

(g) Action by the Commission pursuant to paragraph (e) of this section shall be taken in accordance with the provisions of Rule 27 of the Commission's Rules of Practice, 17 CFR 201.27, applicable to adjudications under the Securities Exchange Act of 1934, not required to be determined on the record after notice and opportunity for hearing.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, et seq. * * *

4. By amending Item 21(a)(2) to Form S–18 (§ 239.28) to add the following:

§ 239.28 Form S–18, optional form for the registration of securities to be sold to the public by the issuer for an aggregate cash price not to exceed $7,500,000.

Form S–18

* * * * *

Item 21. Financial Statements

(a) General

* * * * *

(2) * * * Additionally, the definition of certified set forth in paragraph (f) of Article 1–02 of Regulation S–X (17 CFR 210.1–02) shall apply to such financial statements, and the related peer review requirement of Article 1A of Regulation S–X (17 CFR 210.1A) shall apply to independent accountants certifying such financial statements.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read, in part as follows:

Authority: Sec. 23, 48 stat 901, as amended by 15 U.S.C. 78w * * *

6. By revising paragraph (i)(5) of § 240.17a–5 to read as follows:

* * * * *

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(i) * * *

(5) *Definitions.* For the purpose of this rule, the terms "audit" (or "examination"), and "accountant's report", shall have the meanings given in § 210.1–02 of Regulation S–X. The term "certified", when used in regard to financial statements, shall have the meaning given in paragraph (f) of § 210.1–02 of Regulation S–X, except that subparagraphs (i) and (ii) of paragraph (f) shall not apply.

* * * * *

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

8. By revising instruction 1B to Schedule G of Form ADV to read as follows:

Schedule G of Form ADV—Balance Sheet

1. The balance sheet must be:
A. * * *
B. Audited by an independent public accountant. When the balance sheet is required in a filing of this form with the Commission, the accountant, as of the date of the completion of the examination, shall be in compliance with the peer review requirement of § 210.1A–01.
* * * * *

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

April 1, 1987.

Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis, which relates to proposed amendments to Regulation S–X that would require accountants' reports included in filings with the Commission to be signed by an independent accountant who has undergone a peer review of its accounting and audit practice within the past three years, has been prepared in accordance with 5 U.S.C. 603.

1. Reasons for Proposed Action

As discussed in the sections of the release entitled "Background" and "Benefits of Peer Review", the Commission believes that data exists that supports the position that peer reviews improve the quality of audits, which in turn improves the reliability of financial statements.

Recently, several private sector organizations have suggested that membership in an organization conducting peer reviews should be mandatory for auditors of Commission registrants. For example, the American Institute of Certified Public Accountants ("AICPA") is in the process of soliciting its membership for a vote on whether a recommendation by the Special Committee on Standards for Professional Conduct of CPAs should be adopted to require firms containing AICPA members to join its peer review program conducted by the SEC Practice Section ("SECPS") if they audit one or more SEC registrants. The National Commission on Fraudulent Financial Reporting has also tentatively concluded that peer reviews should be mandatory for accountants practicing before the Commission. Price Waterhouse and the chief executive officers of seven other major accounting firms have called for mandatory peer review. In addition, the Committee on Government Operations of the U.S. House of Representatives has recommended that the General Accounting Office ("GAO") revise its standards to provide that accountants performing audits under the Single Audit Act of the recipients of federal assistance funds undergo periodic peer reviews. The Committee further stated that if current peer review procedures are excessively expensive for small firms then GAO should work with the accounting profession and others to develop reasonably priced peer review procedures. Finally, the Rural Electrification Administration has adopted rules requiring accountants certifying the financial statements of borrowers to belong to and participate in an approved peer review program. *See* 51 FR 2788 *et seq.* (January 21, 1986).

In view of the statistics quoted in the release concerning the potential benefits of peer review and the Commission's previous conclusions that peer review contributes to the improvement in audit quality (*see* U.S. Securities and Exchange Commission Fifty–First General Report, p. 17–18), it is appropriate at this time for the Commission to consider such a requirement.

2. Objectives

The objective of the proposed rule is to enhance the quality of audits of Commission registrants. This improvement in practice should result from the correction of deficiencies in firms' quality control systems as those deficiencies are identified by the peer reviewers. The goal will be to have each firm maintaining and complying with a system of quality controls that meets or exceeds professional standards.

Under generally accepted auditing standards ("GAAS"), the quality control systems established by firms may vary depending on a firm's size, the degree of operating autonomy allowed its personnel and its practice offices, the nature of its practice, its organization, and appropriate cost-benefit considerations. Statements on Auditing Standards No. 25; AICPA Professional Standards AU section 161.02. The required documentation concerning the firm's quality controls and compliance with those controls may also vary, depending on the firm's size, structure and nature of practice. Statement on Quality Control Standards No. 1; AICPA Professional Standards QC section 10.09. The objective of the rule, therefore, is not to have all firms adhering to the same quality control system, but for each firm to establish a system suitable to its practice and in line with these professional standards.

3. Legal Basis

The Commission is proposing the rules requiring auditors of Commission registrants to have received a peer review pursuant to the authority in sections 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933, 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25)(26); sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w(a); sections 5(b), 10(a), 14, and 20(a) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79e(b), 79j(a), 79n, 79t(a); and sections 8, 20, 30, 31, and 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), and sections 203, 204 and 211 of the Investment Advisers Act of 1940, 15 U.S.C. 80b–3, 80b–4, 80b–11.

4. Small Entities Subject to the Rule

The proposed rule would require accountants auditing SEC registrants to undergo a peer review ever three years. The accountant may elect to have the peer review either conducted under the auspices of a peer review organization ("PRO") or directly overseen by the Commission. The PRO that would come closest to qualifying under the proposed rule would be the SECPS. It has been estimated that 178 of the approximately 800 auditors of those SEC registrants which are public companies are members of the SECPS peer review program.[1] These 178 firms, however, audit over 83% of all public companies. It has been estimated that the 625 firms that currently are not participating in this peer review program are smaller firms, auditing approximately 1700 registrants. While the Commission has not defined "small accountant" for Regulatory Flexibility Act purposes, the regulations adopted by the Small Business Administration provide that an accounting firm (including its affiliates) with not more than § 4 million in annual receipts is to be considered "a small entity". 13 CFR 121.2. The Commission does not have data on the revenues of the 625 accounting firms which are not currently participating in the SECPS peer review program; however, it is considered probable that a substantial number of such firms could be considered "small" within the Small Business Administration's definition. Not all of the registrants audited by

[1] Approximately 125 additional auditors of Commission registrants participate in a peer review program conducted by the AICPA's Private Companies Practice Section ("PCPS"). The PCPS, however, does not have a public oversight body, and does not satisfy other criteria for a PRO set forth in the proposed rules.

these firms, however, are "small entities" as defined by the Commission for the purpose of the Regulatory Flexibility Act.

A small issuer for purposes of the Regulatory Flexibility Act is defined by Rule 157 under the Securities Act, 17 CFR 230.157, as an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less and that is engaged or proposing to engage in an offering of securities which does not exceed $5 million. While the Commission has no data on the number of small issuers in existence, in the recent experience of the Commission, several hundred small issuers file registration statements with the Commission each year.

In addition, a "small business" or "small organization" for purposes of the Regulatory Flexibility Act is defined by Rule 0–10 under the Investment Company Act of 1940, 17 CFR 270.0–10, as an investment company with net assets of $50 million or less as of the end of its most recent fiscal year. As of March 31, 1986, about 1300 of 2592 active registered investment companies would be small entities as defined by Rule 0–10.

The current proposals would not affect broker/dealers whose financial statements are filed pursuant to Rule 17a–5 under the Exchange Act, 17 CFR 240.17a–5. The Commission, however, is soliciting comments on whether to include such entities. Rule 0–10(c) under the Exchange Act, 17 CFR 240.0–10(c), indicates that a "small entity" or "small organization" for the purposes of the Regulatory Flexibility Act shall mean a broker or dealer that (1) had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d), 17 CFR 240.17a–5(d), or if not required to file such statements, a broker or dealer that had total capital of less than $500,000 on the last business day of the preceding fiscal year, and (2) is not affiliated with any person that is not a small business or small organization as defined in this section. As of the fourth quarter for 1985 approximately 7,040 broker/dealers were small entities or organizations as defined by this rule.

Finally, a "small business" or "small organization" for purposes of the Regulatory Flexibility Act is defined by Rule 0–7 under the Investment Advisers Act of 1940, 17 CFR 275.0–7, as an investment adviser that manages assets with an aggregate value of $50 million or less. If the adviser's business is not limited to managing accounts, the assets of its advisory business must also not exceed $50,000 at the end of its most recent fiscal year. Approximately 300 investment advisers, which would be affected by adoption by the proposed rules because they are required to file certified balance sheets with the Commission, would be small entities as defined by Rule 0–7.

5. Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule would require accounting firms to maintain quality control systems and document both that system and compliance with the system in accordance with professional standards. Under these standards, the type of system developed by a firm and the related documentation may vary from firm to firm depending on the firm's size, the degree of operating autonomy allowed its personnel and its practice office, the nature of the firm's practice, the firm's organization and appropriate cost-benefit considerations. Statements on Auditing Standards No. 25, AICPA Professional Standards AU section 161.02; Statement on Quality Control Standards No. 1, AICPA Professional Standards QC sections 10.06 and 10.09. The records kept will therefore vary from firm to firm, with smaller firms generally maintaining and documenting a smaller, simpler system than larger firms.

The systems maintained by the firms, and the firms' compliance with those sytems will be examined by peer reviewers in accordance with the peer review standards set forth in the proposed rule. Under these standards, the documentation of a peer review must be adequate to indicate the work performed and the results of that work, to demonstrate that the peer review standards and related policies and procedures have been complied with, and to provide a basis for the peer reviewer's opinion. For those peer reviews conducted under the auspices of a PRO, the Commission staff will have sufficient access to the peer review workpapers to allow it to reach a judgment as to the efficacy of the PRO's peer review program. It is anticipated that those wishing to establish a PRO will inform the Commission of the procedures the PRO would use for documenting peer reviews, and the Commission will determine whether the procedures are sufficient to meet the requirements and objectives of the proposed rule. The procedures established by PROs may vary depending on the nature of their membership and other factors. The workpapers and records maintained by a PRO for each peer review may also vary depending on the size and nature of firm that was the subject of the peer review.

In addition, under the proposed rule a public file would be maintained by the PRO, or by the Commission for peer reviews directly supervised by the Office of the Chief Accountant, for peer reviewers' reports and letters, and reviewed accountants' responses to those reports and letters.

The proposed rule, however, will not impose additional reporting, recordkeeping or other compliance requirements on Commission registrants, other than having the auditor's report signed by a firm that has had a peer review complying with the proposed rule within the last three years. Approximately 85% of all public companies (based on figures published by the Public Oversight Board for the SECPS) currently have auditors that participate in a peer review program. This percentage may increase if the AICPA votes to adopt mandatory SECPS membership for firms with AICPA members having one or more SEC clients, as discussed in item 1 above. Registrants will not, in any event, have a specific disclosure or recordkeeping requirement under the rule.

6. Overlapping or Conflicting Federal Rules

As noted in item 1 above, the Rural Electrification Administration ("REA") adopted rules in January 1986 that require accountants certifying the financial statements of borrowers to belong to and participate in an approved peer review program. One of the programs acceptable to the REA is the program conducted by the SECPS. *See* 7 CFR 1789.9(c). Provided this and similar programs would also be acceptable to the Commission, there would be a duplication of rules. This duplication is necessary, however, because of the significantly greater number of accountants auditing SEC registrants than auditing REA borrowers, and the fact that not all auditors of SEC registrants are auditors of REA borrowers. In addition, although the rules would overlap, it appears likely that accountants subject to both sets of rules could satisfy both through membership in a single PRO. Accordingly, such accountant should not encounter significant additional expense in complying with the Commission's proposed rules. Moreover, there does not appear to be any conflicts between the REA's rules and the Commission's proposed rules.

The House Committee on Government Operations has also recommended that GAO revise its standards to require

accountants auditing recipients of Federal assistance funds undergo peer reviews. As GAO has not yet proposed any mandatory peer review rules, the Commission cannot predict how many of the accounting firms auditing Commission registrants that do not presently undergo peer review would be subject to the GAO's rules or whether any such rules would duplicate, overlap or conflict with the Commission's proposed rules.

7. Significant Alternatives

In July 1985 the Commission published for comment a proposal to amend Item 9(b) of Schedule 14A to call for disclosure by the registrant of whether its accountant is a member of an organization that has a peer review requirement for member firms and, if so, whether the accountant has undergone a peer review and the date of the most recent peer review report. The text of the proposing release (Release No. 33–6592 [July 1, 1985], 50 FR 29409) noted that registrants should consider whether Rule 14a–9, 17 CFR 240.14a–9, would require disclosure of the nature of any qualifications of the report and the status of the accountant's efforts to correct deficiencies that were the basis for such qualifications.

Based on the comments received on the proposal and the Office of the Chief Accountant's ("OCA") experience regarding peer reviews, OCA recommended that the Commission consider adoption of a disclosure requirement focusing solely on the accountant's membership in a peer review organization, rather than on the nature of the peer review report. After full consideration of OCA's recommendation and the comments received on the earlier proposal, on November 4, 1986, the Commission voted not to adopt OCA's recommendation. Instead of adopting such a rule, the Commission instructed the staff to consider the issues involved in directly mandating peer review.

The Commission could exempt small accountants from the proposed amendments. Doing this, however, may not provide the additional degree of needed investor protection peer review would likely bring. Based on the data cited in the release the Commission does not believe that the additional costs of peer review to the great majority of small accountants should be prohibitively great; however, it is soliciting comments on the cost of peer review to small firms and the extent to which the peer review requirement may be a barrier to small firms wishing to initiate a practice before the Commission. Also, it should be emphasized that, as noted in item 2 above, the quality control systems to be adopted by firms and their documentation of those systems may vary from firm to firm depending on the firm's size and other factors including cost-benefit considerations.

Under the proposed rules, PROs may adopt differing procedures based on the nature of their membership or other criteria provided their program satisfies the requirements and objectives of the proposed rule. An organization whose primary membership consists of small firms auditing "small entities" may therefore have different peer review procedures than a PRO whose membership consists principally of large firms. The design and performance of the peer review procedures may therefore be adjusted by the PROs to correlate to the types of quality control systems used by its membership. Also, should a small firm decide that the cost of membership and participation in a PRO's peer review program is excessive, it may elect to have its peer review directly reviewed by the Commission. Such an election, however, would still result in the payment of a fee to a peer reviewer and a fee the Commission for its supervisory services. *See* 31 U.S.C. 9701. It is anticipated, however, that the Commission's supervisory fee would be less than the membership fee charged by a PRO.

Similarly, the proposed rules do not exempt "small entities" or provide extended times for the auditors of small entities to qualify under the rule. It is believed by the Commission that the auditors of most large entities already belong to the SECPS, and are therefore currently subject to a peer review program. The time periods and scope of the proposed rule were therefore selected based on the needs and abilities of small entities and their accounting firms. There is little reason to further restrict the benefits of the proposed rule by exempting small entities from the rule or its timing. It should be noted, however, that the Commission is also requesting comments on the possibility of requiring disclosure of either membership in a PRO or the receipt of a peer review, as an alternative to mandatory peer review. Disclosure, instead of mandatory peer review, might benefit those small firms which do not believe that, under their particular circumstances, the benefits of peer review exceed its cost.

8. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this initial regulatory flexibility analysis. Such comments will be considered in the preparation of the final regulatory analysis if the proposed rules are adopted. The Commission is especially interested in any empirical data on the costs and/or benefits of the proposed rules. In particular, estimates on the costs and benefits of the rules as they apply to small entities are requested. Comments on the initial regulatory flexibility analysis will be placed in the same public file as that designated for comments on the proposed rule. All comments on this analysis should therefore refer to the same S7 file number as that designated at the beginning of this release. These comments will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R–87–1323; FR–2241]

Mutual Insurance Programs Under the National Housing Act; Direct Endorsement Processing

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

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise 24 CFR 200.163 which implements HUD's Direct Endorsement Program, to establish a dual certification procedure. At present, the mortgagee's underwriter is required to certify as part of the application process that a prescribed set of statutory and regulatory requirements have been met for the purpose of endorsement for insurance. The underwriter, under the existing regulations, certifies that (1) the property and the mortgagor meet HUD's eligibility requirements, and (2) the mortgage has been closed as required by HUD. While the underwriter makes certifications, the mortgagee is ultimately accountable. Under the proposed dual certification procedure, the underwriter will certify as to the findings of eligibility of the property and mortgagor. The Direct Endorsement Mortgagee (through its authorized representative) will then certify as to

matters relating to the actual closing of the loan. The rule will accelerate mortgage processing and case submissions to HUD, and will also set forth more explicitly the responsibilities of mortgagees and their underwriters under the Direct Endorsement Program.

DATE: Comments are due May 11, 1987.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment received will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Single Family Development Division, Office of Single Family Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 22, 1983, HUD published regulations at 48 FR 11928 for a new program involving direct underwriting of insured single family mortgage loans by approved mortgage lenders. (See 24 CFR 200.163– 200 through 164.) Under this program, the lender has the responsibility for underwriting and closing the mortgage loan and for submission of the loan to HUD for insurance endorsement, without need of any prior HUD commitment. This Direct Endorsement Program does not replace the existing mortgage insurance application procedure, but is available in addition to the existing procedure. The purpose of the new program is to simplify and expedite the process by which mortgages can secure mortgage insurance endorsements from HUD.

Experience under the program has demonstrated that participating mortgagees have assumed their role in the processing of FHA-insured mortgages responsibly and effectively. To maintain a high quality of underwriting, most mortgagees have consolidated their underwriting activities into central locations covering a number of branches, field offices, and in some cases, the mortgagee's nationwide lending activity.

At each step in the processing, *i.e.*, appraisal review, credit review, submission for endorsement, the documents are sent to the mortgagee's underwriter and upon approval, are returned to the originating office. Concern has been expressed by the industry that the final submission of the closed mortgage package to the underwriter for review and certification creates unnecessary delays in submitting cases to HUD.

While current regulations require underwriters to certify as to all phases of loan processing, the underwriter certifies for and on behalf of the mortgagee. However, both the mortgagee and underwriter can be held accountable and, in the event of importer processing, the mortgagee may be sanctioned in accordance with § 200.163(h), and the underwriter in accordance with 24 CFR Part 24. The dual certification procedure authorized in this rule in no way lessens mortgagee responsibility—it merely separates those functions that relate to underwriting and approval from those associated with closing and insuring. (Also, it should be noted that there is nothing to prevent the underwriter from being designated by the mortgagee to sign both certificates. However, where a loan correspondent is involved, under 24 CFR 203.5, the loan correspondent must close in its own name, and may not underwrite direct endorsement loans for submission to HUD/FHA.)

Specifically, this rule would permit a representative of the mortgage (who does not need to be the underwriter) to certify as to the following closing-related items: (A) That the mortgage contains certain provisions required under specific sections in Parts 203, 221 or 234, as applicable; (B) that the mortgage covers real estate held in fee or under a renewable 99-year leasehold; (C) that any GPM (graduated payment mortgage), modified GPM, GEM (growing equity mortgage) or ARM (adjustable rate mortgage) meets relevant regulatory requirements; (D) that the property meets applicable flood plain requirements; (E) that the stated mortgage amount meets applicable regulatory requirements; (F) that the mortgagor has made the required minimum investment; (G) that a mortgage involving refinancing does not exceed the specified maximum mortgage amounts for such mortgages; and (H) for a property in an outlying area, that the requirements of 24 CFR 203.18(d) are met.

One certification by the underwriter (§ 200.163(c)(21) required under the current regulations is proposed to be removed by this rule as unnecessary. Section 200.163(c)(21) requires a certification with respect to the mortgage's negotiated interest rate. The certification is unnecessary, since the rate is not subject to FHA approval and the mortgagor and mortgagee are free to set whatever rate they may agree upon.

Also, the underwriting certification that regulatory requirements with respect to any secondary liens are met (current § 200.163(c)(15), proposed § 200.163(c)(7)) is expanded to also cover junior liens held by a non-governmental agency pursuant to §§ 203.32 (c) and (d) or §§ 234.55 (c) and (d). Those sections were revised at 50 FR 20903, May 21, 1985 to include such non-governmental junior liens.

Findings and Other Information

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 implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely provides for a more efficient loan processing procedure, which should prove beneficial to both small and large entities.

Certifications are exempt from approval by the Office and Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3502) provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address and the nature of the instrument. The requirements described in § 200.163(b)(5)(xi) and (c) of this rule are exempt from OMB approval because the Department provides the language and

the mortgagee need only certify to the accuracy of the information by its signature.

This rule was listed as item number H–29–86 (Sequence Number 802) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38426); pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

(The catalog of Federal Domestic Assistance numbers are 14.105 through 14.165)

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Mortgage insurance, Homeownership.

Accordingly, 24 CFR Part 200 is amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR Part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Subpart G is issued under sec. 214, Housing and Community Development Act of 1980, as amended by sec. 329, Housing and Community Development Amendments of 1981 (42 U.S.C. 1436a).

2. Section 200.163 is proposed to be amended by adding a new paragraph (b)(5)(xi), and by revising paragraphs (c) and (d)(6), to read as follows:

§ 200.163 Direct endorsement.

* * * * *

(b) * * *

(5) * * *

(xi) A mortgagee closing certification on a form prescribed by the Secretary, stating that the authorized representative of the mortgagee (or loan correspondent sponsored by the mortgagee) who is making the certification has personally reviewed the mortgage documents and the application for insurance endorsement and certifying that the mortgage complies with the requirements of this paragraph (b). This mortgage certification is in addition to any certifications required of the mortgagee or the mortgagor (or both) on HUD forms 92800 and 92900. The certification shall include (in addition to any supplemental certification items prescribed and published under paragraph (f) of this section) each of the below-listed certification items which apply to the mortgage loan submitted for endorsement:

(A) That the mortgage satisfies the requirements (as appropriate) of 24 CFR 203.17, or the requirements of 24 CFR 221.5, 221.25, 221.30, 221.32, 221.35, 221.40, and 221.45 or 234.25;

(B) That the mortgage shall be on real estate held in fee simple, or on a leasehold under a lease for not less than 99 years which is renewable, or under a lease which otherwise meets the requirements of 24 CFR 203.37, or 203.37 as incorporated by reference in § 222.1, or § 234.65;

(C) That any graduated payment mortgage meets the requirements established under 24 CFR 203.45 or 234.75; any modified graduated payment mortgage meets the requirements established under 24 CFR 203.46 or 234.76; any growing equity mortgage meets the requirements established under 24 CFR 203.47 or 234.77; and any adjustable rate mortgage meets the requirements established under 24 CFR 203.49 or 234.79;

(D) That the property covered by the mortgage meets the flood plain requirements set forth in § 203.16a, or § 203.16a as incorporated by reference in § 221.1, or § 234.17;

(E) That the stated mortgage amount (*1*) satisfies the requirements of 24 CFR 203.18, 203.18a, 203.18b, 203.29, or § 203.29 as incorporated by reference in §§ 221.1, 221.10, 221.11, 221.20, 221.50, 234.27, or 234.49, as applicable; and (*2*) for a mortgage given to refinance a mortgage, the stated amount satisfies the limitations set forth in paragraph (b)(5)(xi)(E)(*1*) of this section, and any further limitation prescribed by the Secretary;

(F) That the mortgagor has made the minimum investment required by 24 CFR 203.19, 221.50 or 234.28, and no prepaid expenses other than those listed in 24 CFR 221.54 and those specifically approved by the Secretary were included in determining the mortgagor's minimum investment;

(G) That for a mortgage involving refinancing to be insured under 24 CFR 221.21, the mortgage, in addition to the limitations contained in §§ 221.10, 221.11 and 221.20, does not exceed the estimated cost of repair and rehabilitation and the amount required to refinance the existing indebtedness secured by the property;

(H) That for a property located in an outlying area, the mortgage meets the requirements of 24 CFR 203.18(d); and

(I) That a mortgage to be insured under section 234(c) of the National Housing Act meets the requirements of 24 CFR 234.59.

(c) *Underwriter Certification.* The underwriter shall personally review the appraisal report and credit application (including the analysis performed on the worksheets) and shall certify, for and on behalf of the mortgagee on a form prescribed by the Secretary, that the proposed mortgage complies with HUD underwriting requirements. For each mortgage reviewed, this Underwriter Certification shall include an indentification of the mortgage by type, as identified under § 200.163(a)(3); a statement that the underwriter has personally reviewed the relevant documents; and a statment that the mortgage complies with the requirements of this paragraph (c). The Underwriter Certification is in addition to any certifications required of the mortgagee, the mortgagor, or both on HUD forms 92800 and 92900. The Underwriter Certification shall include (in addition to any supplemental certification items prescribed and published under paragraph (f) of this section) each of the below-listed certification items which apply to the mortgage loan submitted for endorsement:

(1) That the mortgaged property is located in a community where the housing standards meet the requirements of the Secretary as required by 24 CFR 203.40;

(2) That there is located on the mortgaged property a dwelling unit designed principally for residential use for not more than four families, as required by 24 CFR 203.38, or by 203.38 as incorporated by reference in § 221.1;

(3) That the mortgator's monthly mortgage payments will not be in excess of his or her reasonable ability to pay, as required under 24 CFR 203.21, or § 203.21 as incorporated by reference in § 221.1, or as required under § 234.36;

(4) That the mortgagor's income is and will be adequate to meet the periodic payments required for the mortgage submitted for insurance, as required by 24 CFR 203.33, or 203.33 as incorporated by reference in § 221.1, or § 234.56;

(5) That the mortgagor's general credit standing is satisfactory, as required under 24 CFR 203.34, or 203.34 as incorporated by reference in § 221.1, or § 234.57;

(6) That the buildings on the property secured by the mortgage comply with the applicable property standards issued by HUD as required by 24 CFR Part 200, Subpart S, for proposed construction, and the standards set forth in HUD Handbooks 4905.1, for existing construction, and 4940.4, for rehabilitation construction;

(7) In cases where the mortgaged property is subject to (i) a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State or local government agency or instrumentality or (ii) a second mortgage held by a mortgagee that is not a

Federal, State or local governmental agency or instrumentality or (iii) a junior (second or third) mortgage securing the repayment of funds advanced to reduce the mortgagor's monthly payments on the insured mortgage following the date it is insured;
that the applicable requirements of 24 CFR 203.32 (b), (c) or (d), 203.32 (b), (c) or (d) as incorporated by reference in § 221.1, or § 234.55 are met;

(8) That the property designed for a two-, three- or four-family residence has one of the dwelling units occupied by the mortgagor, as required by 24 CFR 221.12;

(9) For a condominum unit, that the mortgaged property is in a project that has been approved by HUD under 24 CFR 234.26;

(10) In the case of proposed or new construction to which 24 CFR 203.12 is applicable, that the property covered by the application for insurance meets the requirements of 24 CFR 203.12(c); and

(11) That the property covered by the mortgage is not located in an area that is precluded from receiving Federal financial assistance pursuant to the Coastal Barrier Resources Act (Pub. L. 97–349).

(d) * * *

(6) That all necessary certifications are made in accordance with paragraphs (b) and (c) of this section.

* * * * *

Dated: March 25, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 87–8041 Filed 4–9–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 628]

San Benito Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in California to be known as "San Benito." This proposal is the result of a petition submitted by Almaden Vineyards, a winery and grape grower in the proposed area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable winemakers to label wines more precisely and will help consumers to better identify the wines they purchase.

DATES: Written comments must be received by May 26, 1987.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 (Notice No. 628).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at:

ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American vitcultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Almaden Vineyards, proposing an area in San Benito County, California, as a viticultural area to be known as "San Benito." The proposed area contains about 45,000 acres of land, of which approximately 2,500 are currently planted to grapes. The area is located along and near the San Benito River, approximately two miles south of Hollister, California. The petitioner states that at least three major wineries are operating within the area, and that approximately 23 different varieties of wine grapes are grown there. The proposed area is located inside the approved "Central Coast" viticultural area and contains within it the approved "Paicines," "Cienega Valley," and "Lime Kiln Valley" areas. (See the discussion of overlapping viticultural areas below, under "BOUNDARIES OF THE AREA.")

Name of the Area

The association of the name "San Benito" with the proposed viticultural area goes back far into history. The San Benito River flows through the area, and one of the principal streets of nearby Hollister was already called "San Benito Street" in 1874, when the surrounding territory, including the proposed viticultural area, was organized as "San Benito County." (See *Crimes and Career of Tiburcio Vasquez*, San Benito County Historical Society, pp. Nine and Seventeen.) The town of San Benito is about 15 miles southeast of the proposed area, and San Benito Mountain is about 30 miles farther southeast, near the source of the San Benito River and the eastern boundary of San Benito County.

The history of viticulture in the proposed area was described by John P. Ohrwall in a talk given to the San Benito County Historical Society on July 29, 1965. A copy of the talk was submitted to ATF by the petitioner. In that talk, Mr. Ohrwall related that the first vineyard in San Benito County was planted near the proposed viticultural area by Theophile Vache in the early 1850's. Other vineyards were planted too, and the area where vineyards were sited became known locally as the "Vineyard District." Before the end of the nineteenth century, the vineyard planted by Vache had been named "San Benito Vineyard," and, under that name, wines made in the area "were said to

have won prizes at various expositions and fairs, including some held in France and Italy" (quote from Ohrwall). Gradually, additional vineyards and wineries were established in the proposed viticultural area. In the 1950's, Almaden Vineyards arrived and began greatly expanding the area's grape acreage. Today, Almaden is the dominant grape grower in the area.

Unfortunately, the original vineyard planted by Theophile Vache is no longer in production, because the soil in that vicinity has become permeated with boron salts. (See the discussion of boron below, under "GEOGRAPHY OF THE AREA.") Thus, the original "San Benito Vineyard" is excluded from the proposed viticultural area for a geographical reason, but the name that this vineyard gave to the viticultural area remains.

Although there are some scattered grape plantings elsewhere in San Benito County, by far the preponderance of viticulture in that county is practiced in the geographical area proposed by the petitioner. According to the petitioner, 95 percent of the vinifera grapes from San Benito County are grown in the proposed area. The other 5 percent are grown in other areas with different climates, according to the petitioner, who declares, "We are not aware of any other area within San Benito County that could be known as 'San Benito' or that would have comparable climatic and growing conditions." ATF agrees with these assertions, since it appears likely that much of the other 5 percent of the vinifera in San Benito County is planted in the already-established "Pacheco Pass' viticultural area (located north of Hollister, straddling the border of San Benito and Santa Clara Counties).

Further evidence was offered by the petitioner, concerning its use of the name "San Benito" on wine labels. Since 1959, labels have appeared on wines of the petitioner, made from grapes from the proposed area, indicating "San Benito" or "San Benito County" as the appellation of origin.

Geography of the Area

The petitioner presented evidence that the proposed viticultural area is distinguished geographically from the surrounding areas, as follows:

(a) To the north, the area is distinguished from the Hollister Valley by a relative absence of fog. There are presently few or no grapes grown in the Hollister Valley, but if there were, according to the petitioner, they would be of different character from grapes grown in the proposed area. According to the petitioner, "Even an extra hour of fog daily, which is the situation around Hollister, can create a different characteristic in the wine. The grapes would be slower ripening and would result in higher acid."

(b) Additionally, the proposed area is distinguished from certain areas to its north and northeast which are burdened, to quote the petitioner, with "a high amount of boron in the water which deforms and destroys the leaves; the vines cannot grow properly and the grapes cannot ripen." This area of boron contamination includes the site of the original "San Benito Vineyard" discussed above.

Boron contamination is a natural feature of the subsoil north of the proposed viticultural area. Groundwater percolating through this subsoil dissolves some of the boron salts. If such groundwater is later drawn up through wells and used for irrigation, boron contamination begins to build up in the topsoil. This apparently is what happened over a period of years in the original "San Benito Vineyard" land. Although famous for grapes for 50–75 years, that land today is unsuitable for viticulture.

By contrast, vineyards inside the proposed area are irrigated by water from "deep wells with an extremely low level of boron. There is no toxicity and this condition is monitored on a yearly basis," the petitioner states.

(c) The eastern, southern, and western boundaries of the proposed area correspond closely to a climatic change as indicated in *Western Garden Book*, published by Sunset Books. According to this book, the area inside the proposed viticultural area is an "inland area with some ocean influence" which moderates the climate. By contrast, the surrounding areas to the east, south, and west are designated as areas with more "sharply defined seasons," due to their more mountainous elevations.

(d) Distinctions to the east and west, and to a lesser extent to the south as well, exist on the basis of topography. Those neighboring areas are, for the most part, too steeply sloped to be suitable for viticulture. This topographic distinction is apparent from examination of the applicable U.S.G.S. maps.

(e) Finally, the mountain areas to the east and west of the proposed area would generally be too cold for viticulture, according to a statement made to ATF by the University of California Farm Advisor for San Benito County.

Boundaries of the Area

The boundaries of the proposed viticultural area may be found on six U.S.G.S. maps of the 7.5 minute series, titled Hollister Quadrangle, Tres Pinos Quadrangle, Quien Sabe Valley Quadrangle, Mt. Harlen Quadrangle, Paicines Quadrangle, and Cherry Peak Quadrangle. The boundaries would be as described in the proposed § 9.110. These boundaries are slightly altered from the boundaries proposed in the petition, so that the San Benito viticultural area, as proposed in this document, would completely encompass the following approved viticultural areas: "Lime Kiln Valley" (§ 9.27), "Cienega Valley" (§ 9.38), and "Paicines" (§ 9.39). Moreover, the proposed "San Benito" vitcultural area would lie entirely within the approved "Central Coast" area (§ 9.75).

In establishing a viticultural area based on geographical features which affect viticultural features, ATF recognizes that the distinctions between a smaller area and its surroundings are more refined that the differences between a larger area and its surroundings. It is possible for a viticultural area to contain smaller approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the enconomy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographical regions; or

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

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the "San Benito" viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all the circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Been Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is revised to add the title of § 9.110, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

* * * * *

Sec.

9.110 San Benito.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.110, which reads as follows:

§ 9.110 San Benito.

(a) *Name.* The name of the viticultural area described in this section is "San Benito."

(b) *Approved maps.* The appropriate maps for determining the boundaries of San Benito viticultural area are six U.S.G.S. maps. They are titled:

(1) Hollister Quadrangle, 7.5. minute series, 1955 (photorevised 1971).

(2) Tres Pinos Quadrangle, 7.5. minute series, 1955 (photorevised 1971).

(3) Quien Sabe Valley Quadrangle, 7.5. minute series, 1968.

(4) Mt. Harlan Quadrangle, 7.5. minute series, 1968.

(5) Paicines Quadrangle, 7.5. minute series, 1968.

(6) Cherry Peak Quadrangle, 7.5. minute series, 1968.

(c) *Boundary*—(1) *General.* The San Benito viticultural area is located in San Benito County, California. The starting point of the following boundary description is the point where the eastern border of Section 17 of Township 15 South, Range 7 East, crosses the latitude 36°37'30" (on the Cherry Peak map).

(2) *Boundary Description*—(i) From the starting point westward along latitutde 36°37'30" to the Range Line R.6E./R.7E. (on the Paicines map).

(ii) Then northward along that range line to the southern border of Section 1, Township 15 South, Range 6 East.

(iii) Then westward along that southern border to the western border of the same section.

(iv) Then northward along that western border to the 800-foot contour line.

(v) Then northwestward along that contour line to the Township Line T.14S./T.15S.

(vi) Then westward along that township line to the southern border of Section 34, Township 15 South, Range 6 East.

(vii) Then continuing westward along that southern border to the 1200-foot contour line.

(viii) Then generally northwestward along that contour line until it crosses for the second time the southern border of Section 28, Township 14 South, Range 6 East.

(ix) Then westward along that southern border to the 1400-foot contour line.

(x) Then following the 1400-foot contour line through the following sections: Sections 28, 29, and 30, Township 14 South, Range 6 East; Section 25, Township 14 South, Range 5 East; Sections 30, 19, 20, and returning to 19, Township 14 South, Range 6 East; to the point where the 1400-foot contour line intersects the section line between Sections 19 and 18, Township 14 South, Range 6 East.

(xi) From there in a straight line due northward to the 1200-foot contour line in Section 18, Township 14 South, Range 6 East.

(xii) Then following the 1200-foot contour line generally northwestward to the northern border of Section 10, Township 14 South, Range 5 East (on the Mt. Harlan map).

(xiii) Then following that northern border northwestward to the 1600-foot contour line.

(xiv) Then following the 1600-foot contour line generally northward to an unimproved road.

(xv) Then looping southward along the unimproved road and continuing eastward past the designated "Spring" and then northward parallel with Bonanza Gulch to the Vineyard School on Cienega Road (on the Hollister map).

(xvi) From there in a straight line northeastward, crossing Bird Creek and the San Benito River, to the northwestern corner of Section 19, Township 13 South, Range 6 East (on the Tres Pinos map).

(xvii) From there following the northern border of Sections 19 and 20, Township 13 South, Range 6 East, to the northeastern corner of Section 20.

(xviii) From there in a straight line due eastward to the Range line R.6E./R.7E.

(xix) Then southward along that Range line to the Township line T.13S./T.14S.

(xx) Then eastward along that Township line to the eastern border of

Section 6, Township 14 South, Range 7 East (on the Quien Sabe Valley map).

(xxi) Then southward along the eastern border of Sections 6, 7, and 18, Township 14 South, Range 7 East, to the northern border of Section 20, Township 14 South, Range 7 East (on the Cherry Peak map).

(xxii) Then eastward along that northern border to the eastern border of Section 20.

(xxiii) Then southward along the eastern border of Sections 20, 29, and 32, Township 14 South, Range 7 East, and continuing southward along the eastern border of Sections 5, 8, and 17, Township 15 South, Range 7 East, to the starting point.

Approved: April 2, 1987.

Stephen E. Higgins,

Director.

[FR Doc. 87-8001 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Public Comment Procedures and Opportunity for Public Hearing on Proposed Modifications to the Ohio Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of program amendments submitted by Ohio as amendment to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment consist of proposed changes to Ohio's Reclamation Board of Review (RBR) procedural rules. One of the proposed amendments was submitted in response to a required amendment imposed on the State with the approval of the RBR rules published in the **Federal Register** on May 6, 1986 (51 FR 16677).

This notice sets forth the times and locations that the Ohio program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing.

DATES: Written comments from the public not received by 4:30 p.m., May 11, 1987 will not necessarily be considered in the decision on whether the proposed amendment should be approved and incorporated into the Ohio regulatory program. If requested, a public hearing on the proposed amendment will be scheduled for April 30, 1987. Any person interested in speaking at the hearing should contact Ms. Nina Rose Hatfield at the address or telephone number listed below by April 27, 1987. If no person has contacted Ms. Hatfield by that date to express an interest in the hearing, the hearing will not be held. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: The public hearing, if requested, is scheduled for 1:00 p.m., in Room 202, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43227.

Written comments and requests for an opportunity to speak at the hearing should be directed to Ms. Nina Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

Copies of the Ohio program, the proposed modifications to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for public review at the OSMRE Field Office listed above and at the OSMRE Headquarters Office and the Office of State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Columbus Field Office.

Office of Surface Mining Reclamation and Enforcment, Room 5131, 1100 "L" Street, NW., Washington, DC 20240

Ohio Division of Reclamation, Building B, Fountain Square, Columbus, Ohio 43224

FOR FURTHER INFORMATION CONTACT: Ms Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.** Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11 and 935.15.

II. Submission of Revisions

By letter dated January 28, 1987, the Ohio Department of Natural Resources, Division of Reclamation submitted proposed amendments to the Reclamation Board of Review (RBR) rules at OAC sections 1513-3-02, 1513-3-03, 1513-3-04, 1513-3-08, 1513-3-19, and 1513-3-21. The proposed changes include amending O.A.C. 1513-3-02(D)(5) and (6), 1513-3-04(d)(6) and 1513-3-19(F)(1), (2), (3), and (4) to reflect changes in the statutory language of O.R.C. 1513.02(F)(3). The amendments change "an escrow account" to "a penalty fund". O.A.C. 1513-3-03(F) is amended to include language prohibiting *ex parte* Communications between the Board and parties, or representatives of parties, regarding substantive issues of a pending case. O.A.C. 1513-3-08(G) is amended to include language prohibiting the Board from granting temporary relief in cases where such relief would result in the issuance of a coal mining and reclamation permit. The amendments proposed in O.A.C. 1513-3-21(E)(3), (4) and (5) were required by OSMRE so that the Ohio rule would be no less effective than the Federal counterpart regulations. The amendment sets forth the standards which the Board will apply in determining whether an award of costs and attorneys' fees is appropriate in a case before the Board.

The full text of the proposed program amendments submitted by Ohio is available for public inspection at the addresses listed above. Upon request to OSMRE's Field Office Director, each person may receive, free of charge, one single copy of the proposed amendment. The Director now seeks public comment on whether the proposed amendments are no less effective than the Federal regulations. If approved, the amendments will become part of the Ohio program.

III. Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C., 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would 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 would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 3, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–8067 Filed 4–9–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 87–01]

Special Local Regulations; Annual Marine Events Within the Second Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule will establish permanent special local regulations for marine events within the Second Coast Guard District which recur on an annual basis and which have been determined by the District Commander to require the issuance of special local regulations. This action is taken to insure the safety of life during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event.

DATE: Comments must be received on or before May 11, 1987.

ADDRESSES: Comments should be mailed to: Commander, (bt), Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103. The comments will be available for inspection and copying at Offices of Commander (bt), Second Coast Guard District Office, 1430 Olive Street, St. Louis, MO 63103–2398. Normal office hours are between 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays. Comments may also be hand delivered.

FOR FURTHER INFORMATION CONTACT: LCDR B.J. Willis, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103–2398 (314) 425–5971.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD2 87–01) 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 regulations may be changed in light of comments received. 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 for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LCDR B.J. Willis, Second Coast Guard District Boating Technical Branch and LT R. E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

Discussion of Proposed Regulations

Each year various public and private organizations sponsor marine events on navigable waters within the Second Coast Guard District. These events include slow moving boat parades, raft races, high speed hydroplane races, steamboat races, fireworks displays, and other water related events. The nature of many of these events is such that special local regulations are deemed necessary in order to insure the safety of life during the events. Most of the events which have been determined to require the promulgation of such regulations are annual events, held in approximately the same location and during the same general period of time each year. Because of the recurring annual nature of these events, the Commander of the Second Coast Guard District has decided to promulgate a permanent amendment to Part 100 of Title 33 of the Code of Federal Regulations. This will preclude the necessity of separate publication of a special local regulation for each event on an annual basis. In the future, public notice of the particulars of these recurring events will be provided in local notices to mariners and specially issued regatta notices. It should be noted that Table 1 in the regulation is not a complete list of all annual marine events which occur in the Second Coast Guard District, but only those which have been determined by the District Commander to require the issuance of special local regulations in order to insure the safety of life.

Economic Assessment and Certification

These 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 regulated areas will be in effect for a short period of time. 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 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 (b) and 33 CFR 100.35.

2. Part 100 is amended by adding a § 100.201, to read as follows:

§ 100.201 Annual marine events within the Second Coast Guard District

Permanent special local regulations are hereby established for the marine events listed in Table 1. These regulations will be effective annually, for the duration of each event, on or about the dates indicated in Table 1. Annual notice of the exact dates and times of the effective period of the regulations with respect to each event, the geographical description of each regulated area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in local notices to mariners. To be placed on the mailing list for such notices, contact: Commander (oan), Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103–2398.

(a) The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(b) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(d) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(e) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Table One

Kentucky Derby Festival Steamboat Race

Sponsor: Kentucky Derby Festival Inc.
Date: Late April
Location: Ohio River, mile 604, near Louisville, KY

Memphis in May Canoe & Kayak Race

Sponsor: Outdoors, Inc.
Date: Early May
Location: Lower Mississippi River, mile 738.5, near Memphis, TN

Great Tennessee River Raft Race

Sponsor: Tennessee Jaycee Foundation
Date: Early June
Location: Tennessee River, mile 470.5, near Chattanooga, TN

Steamboat Days

Sponsor: Peoria Convention & Visitors Bureau
Date: Middle June
Location: Illinois River, mile 162.3, near Peoria, IL

Riverbend Festival Formula I Outboard Races

Sponsor: Friends of the Festival, Inc.
Date: Middle June
Location: Tennessee River, mile 463.5, near Chattanooga, TN

Outboard Power Boat Races & Fireworks

Sponsor: Tri-State Fair and Regatta
Date: Late June
Location: Ohio River, mile 327.0, near Ironton, OH

New Martinsville Regatta

Sponsor: New Martinsville Regatta Inc.
Date: Early July
Location: Ohio River, mile 129.5, near New Martinsville, WV

Riverfest

Sponsor: Riverfest Inc.
Date: Early July
Location: Upper Mississippi River, mile 697.0, near Lacrosse, WI

Budweiser Indiana Governors Cup

Sponsor: Madison Regatta, Inc.
Date: Early July
Location: Ohio River, mile 557.0, near Madison, IN

Clinton Riverboat Days

Sponsor: Riverboat Days Inc.
Date: Early July
Location: Upper Mississippi River, mile 519.0, near Clinton, IA

V.P. Fair

Sponsor: V.P. Fair Foundation
Date: Early July
Location: Upper Mississippi River, mile 179.2, near St. Louis, MO

Freedom Festival/Thunder on the Ohio

Sponsor: Thunder on the Ohio
Date: Middle July
Location: Ohio River, mile 792.0, near Evansville, IN

Steubenville River Regatta

Sponsor: Ft. Pitt Dis. & River Regatta Committee
Date: Middle July
Location: Ohio River, mile 66.0, near Steubenville, OH

Ramblin Raft Race

Sponsor: American Rafting Assn.
Date: Middle July
Location: Upper Mississippi River, mile 856.0, near Minneapolis, MN

Port of Sioux City River-Cade

Sponsor: Port of Sioux City River-Cade Assn.
Date: Middle July
Location: Missouri River, mile 731.0, near Sioux City, IA

Huntington-Miller Classic Powerboat

Sponsor: Tri-State Fair and Regatta
Date: Late July
Location: Ohio River, mile 307.5, near Huntington, WV

Oakmont Yacht Club Regatta

Sponsor: Oakmont Yacht Club
Date: Late July
Location: Allegheny River, mile 12.0, near Oakmont, PA

Minneapolis Aquatennial Flotilla & Frolic

Sponsor: Minneapolis Aquatennial Assn.
Date: Late July
Location: Upper Mississippi River, mile 813.0, near Hastings, MN

Minneapolis Aquatennial Formula I Grand Prix

Sponsor: Minneapolis Aquatennial Assn.
Date: Late July
Location: Upper Mississippi River, mile 854.8, near Minneapolis, MN

Pittsburgh Three Rivers Regatta

Sponsor: Pittsburgh Three Rivers Regatta
Date: Late July
Location: Ohio, Allegheny & Monongahela Rivers, miles 00.0, near Pittsburgh, PA

Ohio River Festival Regatta

Sponsor: Ohio River Festival Inc.
Date: Early August
Location: Ohio River, mile 220.0, near Ravenswood, WV

Annual Fernbank Regatta

Sponsor: Ohio Valley Motorboat Racing Assn.
Date: Early August
Location: Ohio River, mile 483.0, near Fernbank, OH

Beaver County River Regatta

Sponsor: Beaver County River Regatta Inc.
Date: Middle August
Location: Beaver River, mile 000.0, near Bridgewater, PA

Hoosier Boy Regatta

Sponsor: Indiana Outboard Assn.
Date: Middle August
Location: Ohio River, mile 505.5, near Rising Sun, IN

Armstrong Co. Chamber of Commerce Regatta

Sponsor: Three Rivers Outboard Racing Assn.
Date: Middle August
Location: Allegheny River, mile 44.0, near West Kittanning, PA

Power Boat Racing/Anything That Floats

Sponsor: Kanawha River Navy
Date: Middle August
Location: Kanawha River, mile 58.0, near Charleston, WV

Ohio River Championship River Days

Sponsor: Riverdays Committee
Date: Late August
Location: Ohio River, mile 355.5, near Portsmouth, OH

Annual Charleston Sternwheel Regatta

Sponsor: Charleston Festival Commission
Date: Late August
Location: Kanawha River, mile 58.0, near Charleston, WV

Ft. Smith United Way Raft Race

Sponsor: United Way of Ft. Smith Inc.
Date: Early September
Location: Arkansas River, mile 308.5, near Ft. Smith, AR

Air Show

Sponsor: Steamboat Days Festival Inc.
Date: Early September
Location: Ohio River, mile 602.0, near Louisville, KY

Hudy Gold/WEBN Fireworks

Sponsor: WEBN Radio
Date: Late August
Location: Ohio River, mile 470.0, near Cincinnati, OH

Dated: April 1, 1987.

R.T. Nelson,

Rear Admiral (Lower Half), U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 87-7910 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD5-87-007]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Town of Wrightsville Beach, North Carolina, the Coast Guard is considering a change in the regulations governing operation of the drawbridge across the AICWW, mile 283.1, at Wrightsville Beach, North Carolina, to extend the hourly opening schedule now in effect from May through October to year round. This proposal is being made because both vehicular traffic and drawbridge opening counts for pleasure craft remain high during the "off-season" months. The steady increase of vehicular traffic and bridge openings for the past three years has resulted in increased traffic congestion and delays to the people living and working in the Town of Wrightsville Beach. This action should accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before May 26, 1987.

ADDRESSES: Comments should be mailed to Commander(oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 609. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at the above address, or telephone number (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Ann B. Deaton, project officer, and CDR Robert J. Reining, project attorney.

Discussion of Proposed Regulations

The current regulations for this bridge only require that the draw open on the hour from 7 a.m. to 7 p.m. for the passage of pleasure craft from May through October. The draw opens on demand at all other times. Commercial, government-owned, and vessels in distress are also passed on demand.

The Town of Wrightsville Beach has requested that this hourly opening schedule be extended to include the months of November through April because both highway and pleasure boat traffic continue to be heavy during most of these "off-season" months. The random bridge openings now occurring during these months result in traffic congestion and delays to highway users who live and work in the Town of Wrightsville Beach. This drawbridge is the only highway route into and out of town.

A review of highway and drawbridge logs for the past three years revealed that highway and drawbridge opening counts during the "off-season" months, with the exception of January and February, were as high or higher than those during the currently regulated peak boating season. The month of November had the highest drawbridge opening count throughout the year, followed by April. Only openings for pleasure craft were counted in these totals. Further, the data review shows a steady increase in both highway counts and drawbridge openings for pleasure craft during the "off-season" months for the past three years. These figures appear to support the town's view that Wrightsville Beach is becoming less of a summer resort, and more of a year-round community. As it does, highway traffic is increasing. As previously mentioned, during the months of January and February, drawbridge openings for pleasure craft drop drastically. At the same time, however, highway traffic across the bridge remains fairly constant compared to the remainder of the year. In the absence of any information to indicate that there is a need for more frequent openings during those months, separate regulations have not been proposed for the months of

January and February. This should avoid confusion on opening times for both motorists and boaters.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the 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. This conclusion is based on the fact that this proposal will have no effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic 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 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.821, paragraph (c) is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Bogue Sound to Wrightsville Beach.

* * * * *

(c) (1) Except from 7 a.m. to 7 p.m., the draw of the SR 74 bridge, mile 283.1, at Wrightsville Beach shall open on signal.

(2) From 7 a.m. to 7 p.m. the draw shall open only on the hour for the passage of pleasure vessels.

(3) If a pleasure vessel is approaching the drawbridge and cannot reach the draw exactly on the hour, the drawtender may delay the hourly opening up to 10 minutes past the hour for the passage of the approaching pleasure vessel and any other pleasure vessels that are waiting to pass.

(4) The draw shall open on signal for public vessels of the United States, State or local vessels used for public safety, commercial vessels, and vessels in distress.

Dated: March 24, 1987.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard, District.

[FR Doc. 87–7911 Filed 4–9–87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–3184–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Supplemental notice of reproposed rulemaking.

SUMMARY: In the December 29, 1983 (48 FR 57313), Federal Register, the USEPA proposed disapproval of draft regulations submitted by Indiana as part of its lead State Implementation Plan (SIP). In response to USEPA's proposed rulemaking, the State committed to correct the deficiencies listed in the notice. As a result, on September 29, 1984 (49 FR 38297), USEPA proposed to approve the Indiana lead SIP. On January 2, 1985 (50 FR 123), USEPA extended the public comment period at the request of the State of Indiana. Public comments which were received in response to the December 29, 1983, and September 29, 1984, proposals will be addressed when USEPA takes final rulemaking action on the lead SIP.

Among the comments received was the assertion that certain sources engaged in lead recovery operations in the State were not included in the plan proposed in the September 29, 1984, Federal Register. USEPA re-examined the emission inventory and determined that the State had failed to include process lead fugitive emissions in estimating the lead emissions from certain sources. On April 19, 1985, the State committed to resolve these deficiencies in its emission inventory, as well as additional problems which USEPA had recognized since its proposals.

Since the publication of the proposed approval and the extension of the public comment period, Indiana has submitted additional information to satisfy the major deficiencies identified by USEPA. These were submitted to USEPA on July 8, 1985, July 12, 1985, December 5, 1986, and December 16, 1986.

The purpose of today's notice is to announce receipt of the additional information for the Indiana lead SIP, discuss the results of USEPA's review, and repropose rulemaking actions on the plan.

DATE: Comments on this revision and on the proposed USEPA action must be received by June 9, 1987.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 886–6034, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Office of Air Management, Indiana Department of Environmental Management (IDEM), 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6034.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, USEPA promulgated National Ambient Air Quality Standards (NAAQS) for lead (43 FR 46258). Both primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu g/m^3$), maximum arithmetic mean as averaged over a calendar quarter. Section 110(a)(1) of the Clean Air Act (Act) requires each State to submit a plan which provides for the attainment and maintenance of the primary and secondary NAAQS.

The general requirements for a SIP are outlined in section 110(a)(2) of the Act and USEPA regulations at 40 CFR Part 51. Specific requirements for developing a lead SIP are set forth in 40 CFR Part 51 Subpart G [1] and the manual entitled "Updated Information on Approval and Promulgation of Lead Implementation Plans", July 1983. These provisions require the submission of air quality data, emissions data, air quality modeling, control strategies, demonstrations that the NAAQS will be attained within the timeframe specified

[1] The lead SIP requirements were formerly codified in a separate Subpart, Subpart E, but these were recodified and redistributed within Subpart G, Control Strategy, on November 7, 1986 (51 FR 40655). Many of the former Subpart E requirements specific to lead are now found in 40 CFR 51.117

by the Act, and provisions for insuring maintenance of the NAAQS.

Under 40 CFR 51.117 (formerly 40 CFR 51.80) an attainment demonstration is required: (1) In the vicinity of the following sources which emit 5 or more tons of lead per year—primary lead smelters, secondary lead smelters, primary copper smelters, lead gasoline additive plants, and lead-acid storage battery manufacturing plants that produce 2,000 or more batteries per day, (2) in the vicinity of any other stationary source that emits 25 or more tons of lead per year, or (3) in any other area that has had measured lead concentrations in excess of the NAAQS since January 1, 1974. Any source which meets the requirements of either (1) or (2) above is considered a "point source" for the purposes of today's rulemaking.

In addition, USEPA established lead monitoring and data handling requirements in a September 3, 1981, **Federal Register** notice (46 FR 44159), which was codified at 40 CFR Part 58. Indiana's responses to all of these requirements are addressed in today's notice.

II. Indiana's Lead SIP

The State of Indiana provided several submittals to USEPA on the following dates: July 8, 1985, July 12, 1985, December 5, 1986, and December 16, 1986. Included in these submittals was a regulation limiting lead emissions, 325 IAC 15–1.

Rule 325 IAC 15–1 on Lead Emission Limitations

On July 30, 1986, the Indiana Air Pollution Control Board (IAPCB) preliminarily adopted 325 IAC 15–1. On September 30, 1986, the IDEM submitted 325 IAC 15–1 to USEPA for parallel processing. On December 3, 1986, the IAPCB adopted revised 325 IAC 15–1, which was modified based on public comments. This revised rule was submitted to USEPA on December 16, 1986. It was promulgated for State purposes on January 27, 1987 and resubmitted to USEPA on February 18, 1987.

The rule is divided as follows:

325 IAC 15–1–1	Applicability.
325 IAC 15–1–2(a)	Source-specific provisions for: Refined Metals, Indianapolis; Chrysler Corporation Foundry, Indianapolis; Delco Remy Division of General Motors Corporation, Muncie; Oxide and Chemical Corporation, Brazil; U.S.S. Lead Refinery, East Chicago; and Hammond Lead Products, Inc. HLP (Halox Division and Halstab Division), Hammond.
325 IAC 15–1–2(b)	Operation and Maintenance Programs.
325 IAC 15–1–3	Control of Fugitive Lead Dust.
325 IAC 15–1–4	Methods to Determine Compliance.

Rule 325 IAC 15–1 applies only to those sources specifically listed in 325 IAG 15–1–2. Unless otherwise noted in the rule, compliance is required immediately. The site-specific emission limits and other requirements for these sources contained in 325 IAC 15–1–2 are discussed below. All of the subject sources are to submit operations and maintenance programs designed to prevent deterioration of control equipment performance to the IDEM by June 1, 1987. These will be incorporated into individual operating permits. USEPA requested and the Indiana Office of Air Management (IOAM) agreed to submit these operations and maintenance programs to USEPA for comment prior to the State's approval of them and for information after the State adopts them.

325 IAC 15–1–3 requires all sources listed in 325 IAC 15–1–2 to comply with the following fugitive dust requirements:

(1) No source shall create or maintain outdoor storage of bulk materials containing more than 1.0% lead by weight of less than 200 mesh size particles.

(2) All materials containing more than 1.0% lead by weight of less than 200 mesh size particles shall be transported in closed containers or by enclosed conveying systems.

(3) Control programs shall be designed to minimize emissions of lead from all fugitive emission points. The programs shall include good housekeeping practices for the clean-up of spills and for minimizing emissions from loading and unloading areas as applicable. The program shall be submitted to the IOAM on or before June 1, 1987. The State shall submit these fugitive lead control plans to USEPA for approval as SIP revisions. Indiana has indicated to USEPA that it intends to submit these plans to USEPA as revisions to the Indiana SIP by December 31, 1987. USEPA requests that the State affirm this as a commitment during the public comment period.

325 IAC 15–1–4(a) establishes a stack test (USEPA Reference Method 12, Appendix A of 40 CFR Part 60 and 325 IAC 3–2, Source Sampling Procedures) as the method for determining compliance with the emission limits in 325 IAC 15–1–2. 325 IAC 15–1–4(b) requires sources with restrictions on their hours of operation to maintain logs indicating the actual hours of operation and submit quarterly summaries of these logs to the IDEM.

Action

USEPA proposes to approve 325 IAC 15–1, subject to the submittal of additional requirements as described later in today's notice.

Indiana Lead Sources

The Indiana plan addresses areas of the State where there are sources that have significant lead emissions which have the potential to cause violations of the lead NAAQS. According to the plan, these include both mobile and stationary source related sites.

A. Mobile Source Related Sites

1. Lake County—The Frank Borman Expressway (I–80/94) east of Cline Avenue (Indiana 912) to a point east of Indianapolis Boulevard (Indiana 52/US–20).

2. Clark County—Jeffersonville monitoring site at the junction of I–65/US–62.

3. Floyd County—See discussion in Other Sites below.

The Frank Borman Expressway was included as a study area due to the high volume of vehicular traffic. The geographic area was considered to be dominated by lead emissions from mobile sources. Indiana submitted analysis for this site to demonstrate that the area is attaining the NAAQS. The analysis demonstrated that using the highest valid ambient quarterly lead level of 0.80 $\mu g/m^3$ (third quarter, 1982), the projected future (i.e., in three years) ambient lead concentration is calculated to be 0.78 $\mu g/m^3$. (Note, actual monitored data for 1985 shows a maximum quarterly average concentration of 0.29 $\mu g/m^3$.)

This demonstrates that the lead standard was attained in the Lake County study area in 1982 and will be maintained through continuation of the Federal program to phase down lead in leaded gasoline. Therefore, USEPA is proposing approval of this portion of the plan.

USEPA has also identified the Jeffersonville monitor in Clark County at the junction of I–65 and US–62 as being a mobile source related site. There are no significant lead point sources in the vicinity of this monitor.

An analysis was conducted by a contractor for USEPA. The analysis demonstrated that using the highest recorded ambient quarterly average of 1.74 $\mu g/m^3$ (fourth quarter, 1978), the projected future quarterly average is 0.67 $\mu g/m^3$. (Note, actual monitored data for 1985 shows a maximum quarterly average concentration of 0.20 $\mu g/m^3$.)

Therefore, the recent ambient air quality data verify that the standard for lead has been attained at the

Jeffersonville lead monitor since 1979. Continued attainment is expected through the Federal program to phase-down lead in leaded gasoline. As a result, USEPA is proposing approval of this portion of the Plan.

B. Stationary Source Related Sites

Title 40 CFR 51.117 requires that a lead plan must address all areas in the vicinity of "point sources" of lead and any other areas that have had measured lead air concentrations in excess of the NAAQS since January 1974. The State identified the following as its lead point sources:

1. *Refined Metals Inc.*, a secondary lead smelter located in Indianapolis (Marion County).
2. *U.S.S. Lead Refinery*, a secondary lead smelter in East Chicago (Lake County).
3. *Oxide and Chemical*, a lead oxide manufacturing plant located in Brazil (Clay County).
4. *G.M. Delco Remy*, a lead-acid storage battery manufacturing plant located in Muncie (Delaware County).
5. *Chrysler Corporation Foundry*, a grey iron foundry located in Indianapolis (Marion County).
6. *Hammond Lead Products*, lead oxide manufacturing plant located in Hammond (Lake County).

In addition, USEPA has identified Quemetco, a secondary lead smelter located in Indianapolis (Marion County) as a possible lead point source.

Each of these seven sources are addressed below:

1. *Refined Metals.* Regulation 325 IAC 15–1 requires Refined Metals to:

a. Install and operate hooding systems by June 1, 1987, for the blast furnace's skip hoist and charging area, the blast furnace's slag and tapping area, the casting area, the refinery kettles, and the lead dust furnace charging area. The hooding systems required for the operations listed above shall at least have a minimum of 90% capture efficiency. The emissions shall be vented to a control device with 99.5% control efficiency.

b. Install and operate enclosed screw conveyors by June 1, 1987, to transport lead flue dust to the lead dust furnace.

c. Comply with the emission limits for its M–1 baghouse stack, M–2 baghouse stack, and blast furnace fugitive emissions by June 1, 1987.

d. Limit the hours of operations for those sources whose emissions are specifically restricted by limits in 325 IAC 15–1–2(a)(1) to not more than 2,080 hours/quarter.

Modeled Attainment Demonstration: Indiana performed a computer dispersion modeling analysis consistent with USEPA Modeling Guidelines of the area surrounding Refined Metals. The maximum predicted quarterly concentration was 1.34 $\mu g/m^3$ for the third quarter of 1980 at a receptor located along the fenceline approximately 100 meters (m) northeast of the emission sources. Adding a 0.15 $\mu g/m^3$ background value[2] results in a total predicted concentration of 1.49 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of Refined Metals. Additional discussion of this analysis may be found in the Technical Support Document located at Region V.

Action: The proposed control measures, the implementation of fugitive dust control procedures, and the emission limits were evaluated by USEPA and were determined to meet the requirements of the Clean Air Act. Therefore, USEPA proposes approval of the Indiana lead Plan for Refined Metals, Inc.

2. *U.S.S. Lead Refinery.* U.S.S. Lead is not currently in operation. Should U.S.S. Lead seek to operate its facility in East Chicago in the future, 325 IAC 15–1 limits the operating hours for its blast furnace stack, blast furnace fugitive emissions, refining kettles fugitive emissions, casting fugitive emissions, and the reverbatory furnace fugitive emissions to 334 hours per quarter. In addition, U.S.S. Lead is required to meet the lead emission limits in Indiana Rule 325 IAC 15–1–2(a)(5) for these same sources. (Emissions from the reverbatory furnace stack were neither included in Indiana's modeling demonstration nor in its rule. Therefore, the reverbatory furnace stack is assumed to have a 0.000 lbs/hour limit in Indiana's plan and is being so proposed.) U.S.S. Lead is also required to implement the fugitive dust control procedures specified in 325 IAC 15–1–3(a).

Modeled Attainment Demonstration: The maximum predicted quarterly concentration was 1.35 $\mu g/m^3$ during the first quarter of 1978 at a receptor located along the fenceline approximately 130 m east of the emission sources. Adding the 0.15 $\mu g/m^3$ background value results in a total concentration of 1.50 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of U.S.S. Lead. Additional discussion may be found in the Technical Support Document located at Region V.

Action: The proposed control measures, the implementation of the fugitive dust control procedures specified in Indiana rule 325 IAC 15–1–3(a), and the emission limits were evaluated by USEPA and were determined to meet the requirements of the Clean Air Act. Therefore, USEPA proposes approval of the Indiana Lead Plan for U.S.S. Lead.

3. *Oxide and Chemical Corporation.* Rule 325 IAC 15–1 requires Oxide and Chemical to limit its operation of the Franklin reactor to no more than 670 hours per quarter and to comply with lead emission limits specified in 325 IAC 15–1–2(a)(4) for Barton Reactors Nos. 1, 2, 3, and 4; Rake Furnace Kiln #2; and the Franklin Reactor. The facility is also required to implement the fugitive lead control program required by 325 IAC 15–1–3(a). The maximum predicted quarterly concentration was 1.34 $\mu g/m^3$ for the first quarter of 1976 at a receptor located along the fenceline approximately 100 m from the emission sources. Adding a 0.15 $\mu g/m^3$ background value results in a total concentration of 1.49 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of Oxide and Chemical. Additional discussion may be found in the Technical Support Document located at Region V.

Action: The control measures, the implementation of the fugitive dust control procedures, and the emission limits were evaluated by USEPA and were determined to meet the requirements of the Clean Air Act. Therefore, USEPA proposes approval of the Indiana lead Plan for Oxide and Chemical.

4. *Hammond Lead Products, Inc.* Hammond Lead Products has two facilities in Hammond, separated by several miles. The newer facility is the Halstab Division, regulated by 325 IAC 15–1–2(a)(7). The older facility consists of an old Halstab Plant, since closed, and the HLP-Halox Division, regulated by 325 IAC 15–1–2(a)(6).

Halstab Plant: Control measures in 325 IAC 15–1–2 for the new Halstab Plant include implementation of operation and maintenance procedures for the air pollution control devices, limiting the hours of operation for sources whose emissions are vented

[2] A 0.15 $\mu g/m^3$ background was consistently used in Indiana's lead plan. This background level was suggested in three documents developed by contractors. They are: (1) "Development of an Example Control Strategy for Lead" (draft), January 23, 1979; (2) "Technical Support Document for the Vehicular Lead Analysis for the State of Indiana (Hammond Area)", October 1979; and (3) "Technical Support Document for the Vehicular Lead Analysis for the State of Indiana (Jeffersonville Area)", October 1979. It was also used in the adjoining State of Kentucky lead plan. USEPA and Indiana have evaluated this suggested background level and find it acceptable.

through certain named stacks (S–1, S–9, S–10, S–11, S–12, S–13, S–14, S–15, and S–16), and setting hourly emission limits for these stacks and others.

Modeled Attainment Demonstration (Halstab Plant): The maximum adjusted quarterly predicted concentration was 1.13 $\mu g/m^3$ for the third quarter of 1978, at a receptor located along the fenceline approximately 200 m north of the emission sources. Adding a 0.15 $\mu g/m^3$ background value results in a total concentration of 1.28 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of Hammond Lead Halstab Plant.

HLP-Halox Plant: The Plan requires the Halox Plant to achieve compliance with the lead emission limits in 325 IAC 15–1–2(a)(6) by June 1, 1987. In addition, Hammond Lead is required to further investigate fugitive emissions (see discussion below).

Modeled Attainment Demonstration (Halox Plant): The maximum adjusted quarterly predicted concentration was 1.07 $\mu g/m^3$ for the third quarter of 1978, at a receptor located along the fenceline approximately 200 m north of the emission sources. Adding a 0.15 $\mu g/m^3$ background value results in a total concentration of 1.22 $\mu g/m^3$, thus predicting attainment of the lead NAAQS in the vicinity of Hammond Lead HLP-Halox Plant. Additional discussion may be found in the Technical Support Document located at Region V.

Monitored Violations—HLP-Halox Plant: Notwithstanding the modeled attainment demonstration, USEPA noted in Indiana's data that the ambient lead monitors near this plant continue to measure violations of the lead standard, despite some of the measures previously taken by Hammond Lead to reduce the lead emissions from the Halox plant. USEPA notified Indiana of this deficiency and requested the State to investigate the possible inconsistency between the monitoring and modeling data.

The State was unable to determine if the discrepancy was due to all emission points not yet being in compliance with the regulation (compliance is not required until June 1, 1987), modeling under-predictions, or an incomplete emission inventory used in the modeling. To resolve this issue, the State, in 325 IAC 15–1–2(a) (B), (C), and (D), required Hammond Lead to investigate this discrepancy and included in the rule a schedule for implementing the study and adopting additional measures, if needed, to assure attainment and maintenance of the lead NAAQS.

More specifically, the rule requires Hammond Lead to investigate and submit an interim report to IDEM on or before June 30, 1987, on the nature, cause, and magnitude of fugitive emissions which escape through its 25 roof ventilators and from other processes and exhaust systems. By December 31, 1987, Hammond Lead must submit a revised and complete emission inventory of its lead sources, a final report on the result of the investigations referenced above, and a list of additional control strategies under consideration. By June 30, 1988, Hammond Lead must submit to IDEM revised lead emission limits, if necessary, and control measures to achieve compliance with these limits. IDEM will recommend a revised control strategy to the IAPCB for adoption. Hammond Lead Products will be required to comply with the revised control strategy adopted by the Board as expeditiously as practicable, but no later than December 31, 1989.

Action: The control limitations, fugitive dust control measures, operating restrictions, attainment plan, and further studies for the Hammond Lead Product's Halox and Halstab Plants were evaluated by USEPA and were determined generally to meet the requirements of the Clean Air Act. USEPA concurs with the State on the need for further study and is including the study in its rulemaking on the SIP.

USEPA proposes to approve the Indiana lead plan for Hammond Lead-Halstab. Additionally, USEPA proposes to approve the Indiana lead plan for Hammond Lead-Halox, if during the public comment period, the State submits a more detailed schedule of the Hammond Lead study, with interim and enforceable dates of progress. This schedule should include increments of progress on the collection of additional data and an inventory of sources, selection of control measures, and the adoption of these control measures so as to ensure that the final compliance date will be met. Furthermore, the revised selected control measures, if necessary, must be submitted to USEPA as a SIP revision on or before December 31, 1988.

If no such schedule is submitted, USEPA will disapprove Indiana's overall plan for Hammond Lead-Halox, but will approve the emission limitations and other requirements within the Plan, as interim measures towards the assurance of the attainment and maintenance of the lead NAAQS in the vicinity of that plant.

5. *GM Delco Remy.* Rule 325 IAC 15–1–2(a)(3) requires installation of ductwork to vent the emissions from the three vacuum cleaning lines through the Central Tunnel Systems' control devices and stacks by June 1, 1987. Further, 325 IAC 15–1–2(a)(3) contains enforceable emission limits for the lead sources at Delco Remy and 325 IAC 15–1–3 specifies procedures for controlling fugitive lead dust at the facility.

Modeled Attainment Demonstration: The maximum predicted quarterly concentration was 0.97 $\mu g/m^3$ for the third quarter of 1980, at a receptor located along the fenceline approximately 120 m from the emission sources. Adding a 0.15 $\mu g/m^3$ background value results in a total concentration of 1.12 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of Delco Remy. Additional discussion may be found in the Technical Support Document located at Region V.

Action: The control measures were evaluated by USEPA and were determined to meet the requirements of the Clean Air Act. Therefore, USEPA is proposing approval of the Indiana lead SIP for GM Delco Remy.

6. *Chrysler Corporation.* The only lead emissions at Chrysler are from the cupola. The control strategy restricts the cupola stack to a 0.55 lbs/hr limit and the fugitive emissions to 1.894 lbs/hr. Control measures are in place, and the source should currently be in compliance with both emission limitations.

Modeled Attainment Demonstration: The maximum adjusted predicted quarterly concentration was 1.22 $\mu g/m^3$ for the third quarter of 1980, at a receptor located approximately 170 m northeast of the emission sources. Adding a 0.15 $\mu g/m^3$ background value results in a total predicted concentration of 1.37 $\mu g/m^3$, thus demonstrating attainment of the lead NAAQS in the vicinity of Chrysler.

Action: The emission limitations were evaluated by USEPA and determined to meet the requirements of the Clean Air Act. Therefore, USEPA is proposing approval of the Indiana lead SIP for Chrysler Corporation.

7. *Quemetco.* Quemetco is a secondary lead smelter in Indianapolis. USEPA initially identified Quemetco as a possible point source; i.e., greater than 5 tons/year emissions. On April 13, 1984, and May 4, 1984, the State confirmed that the blast furnace at Quemetco was permanently shut down and has been deleted from the emission inventory. On May 4, 1984, the State submitted a revised emission inventory for Quemetco which includes all stack and process fugitive lead emissions. This inventory shows that Quemetco currently emits less than 5 tons/year of

lead, because of the recent installation of additional controls. The revised emissions inventory includes emissions from two newly installed capture hoods on the casting operations and the reverberatory furnace tapping area, which are vented to a baghouse. Additional information on these controls was contained in a May 4, 1984, submittal.

These controls also limit total suspended particulate (TSP) emissions at Quemetco. However, these controls limit TSP emissions to a greater extent than is necessary to meet the TSP SIP requirements. Thus, there are no Federal requirements to keep these controls operating at their current calculated efficiency.

40 CFR 51.117 requires a demonstration of attainment in the vicinity of secondary lead smelters which emit 5 tons or more of lead per year. Prior to the installation of the capture hoods discussed above, which are not currently federally required, emission estimates for Quemetco exceeded 5 tons/year. As a result, a demonstration of attainment is still required to ensure that control measures are adequate to protect the lead NAAQS.

On May 4, 1984, the State of Indiana submitted a dispersion modeling analysis based on the Climatological Dispersion Model (CDM). Although the modeling analysis predicted that the lead emissions from Quemetco will not result in a violation or interfere with attainment of the lead NAAQS, USEPA can no longer accept this outdated analysis, which did not use the current reference model, Industrial Source Complex Long Term (ISCLT), and did not use sufficient meteorological data. Thus, a modeling analysis consistent with USEPA modeling guidelines is still required.

Action: The State has committed to review its lead source inventory to ensure that Quemetco, and other smaller sources which emit significant quantities of lead, do not have the potential to violate the lead NAAQS. It further committed to modify 325 IAC 15–1, if necessary, to assure that lead emissions from these smaller sources do not threaten the lead NAAQS and that their emissions do not increase above 5 tons/year.

This proposed revision to the rule will provide an enforceable mechanism to prevent Quemetco from increasing its current lead emissions. Therefore, USEPA proposes approval of the Indiana lead SIP for Quemetco, provided that the State submits as a revision to its SIP a preliminarily adopted version of this rule to USEPA during the public comment period and an adopted version of the rule prior to USEPA completing rulemaking on Indiana's lead plan. Additionally, the State must submit during the public comment period an attainment demonstration for Quemetco consistent with USEPA modeling guidelines. USEPA proposes to approve these as part of Indiana's plan.

8. *Other Sites—New Albany—Floyd County.* USEPA reviewed all of its ambient monitoring data collected since 1974 and discovered that a violation of the standard occurred during the fourth quarter of 1978 at a site in New Albany in Floyd County. This area was not included in any of the mobile source or stationary source related sites listed above because of insufficient emissions data.

USEPA proposed disapproval of the New Albany plan in Floyd County in the December 29, 1983 (48 FR 57318), **Federal Register**, because the State had failed to submit information addressing this previously measured violation or to make a demonstration that the current plan would assure attainment and maintenance of the lead standard in Floyd County.

40 CFR 51.117 requires that an analysis must be made in the vicinity of a monitor that has recorded a lead violation since 1974. During the fourth quarter of 1978, a concentration of 1.78 $\mu g/m^3$ was measured at the New Albany monitor, which was determined by the State to be caused by mobile source emissions. These emissions have subsequently been reduced due to the Federal phaseout of lead in gasoline. The State's submittal of April 13, 1984, contained an analysis using a 1978 base year and a 1984 projection year. This analysis demonstrated attainment of the lead NAAQS well before the projection year, and is consistent with the general rollback procedures for the lead SIPs. Therefore, it is considered to be acceptable.

The maximum measured quarterly average during the most recent year (1981) of available data (0.52 $\mu g/m^3$) is consistent with the projected maximum quarterly average of 0.52 $\mu g/m^3$. The monitor was discontinued after that year because the readings were so low.

Action: USEPA is proposing approval of the lead SIP for the New Albany area.

Gary—Lake County (U.S. Steel): The emission inventory indicates that the current lead emissions from U.S. Steel in Gary are less than 25 tons/year. 40 CFR 51.117 does not require a demonstration of attainment in such an area. However, to assure that the SIP is adequate to maintain the standard, USEPA required the State to install and operate an ambient lead monitor near this source. The State began to analyze for lead at the Gary Federal Building site in 1983 (the closest State-operated monitor at that time to U.S. Steel). The maximum measured quarterly average to date is 0.83 $\mu g/m^3$ (1985, 3rd quarter).

Action: USEPA proposes approval of the Indiana lead SIP for the U.S. Steel area in Gary.

Burns Harbor—Porter County (Bethlehem Steel): On November 21, 1983, the State committed to install a monitor to measure the impact of the lead emissions from Bethlehem Steel. The emission inventory indicates that the current lead emissions from Bethlehem Steel in Porter County are less than 25 tons/year. 40 CFR 51.117 does not require a demonstration of attainment in such an area. However, to assure that the SIP is adequate to maintain the NAAOS, USEPA required the State to install and operate an ambient lead monitor near this source.

On May 4, 1984, Indiana stated that Bethlehem Steel began to monitor for lead in May 1983, at two sites. The maximum measured quarterly average to date is 0.11 $\mu g/m^3$ (1984, 1st quarter). Because the measured values over a 3-year period were so low, the State discontinued (with USEPA approval) analysis of lead at these two sites in 1986.

Action: USEPA proposes approval of the Indiana lead SIP for the Bethlehem Steel area.

East Chicago—Lake County (Inland Steel and LTV Steel): The emission inventory indicates that the current lead emissions from Inland Steel and LTV Steel in Lake County are less than 25 tons/year each. Although the emissions levels do not trigger the need for an attainment demonstration, pursuant to 40 CFR 51.117, the existence of measured violations in East Chicago since January 1, 1974, does necessitate an attainment demonstration. Furthermore, USEPA required the State to submit all available lead data for this area and to ensure that it is quality assured and representative.

Attainment Demonstration—The State's modeling analysis for the East Chicago area around Inland Steel and LTV Steel was submitted on April 13, 1984, and May 4, 1984. It predicts attainment in the Inland Steel/LTV Steel area. USEPA's review of this modeling is contained in a memorandum entitled "Indiana Lead SIP," dated June 15, 1984. USEPA finds that this modeling satisfies the requirements of 40 CFR 51.117 for a demonstration of attainment.

Monitoring Program: In the December 16, 1986, submittal, Indiana provided all lead data for the period 1983–1986 (2nd

quarter) for the three monitors near Inland Steel and LTV Steel. All the measured concentrations were less than half of the NAAQS during this period.

Action: USEPA proposes to approve the Indiana lead SIP for the Inland Steel/LTV Steel area in East Chicago.

Bluffton—Wells County (Corning Glass): The Bluffton area in the vicinity of the Corning Glass Company was identified as an area impacted by a major lead source. On November 21, 1983, however, the State indicated that this source was permanently shut down and has been taken out of the State's emission inventory. Further, Indiana indicated that if the source were to resume operation in the future, it would be subject to New Source Review. Consequently, no control strategy is necessary for this source. USEPA is proposing approval of this portion of the Plan.

C. Monitoring Plans

On September 3, 1981 (46 FR 44159), USEPA published its final rules pertaining to Ambient Lead Monitoring and Data Handling, codified at 40 CFR Part 58. The rules call for the development of a State monitoring plan for lead and its inclusion into the surveillance and ambient monitoring program. These plans must meet USEPA's monitoring requirements, including scheduling requirements, requirements concerning the establishment of a monitoring network, and data handling and reporting procedures.

On November 30, 1981, the State of Indiana submitted to USEPA a revision to its SIP which provides for the establishment of an air quality surveillance network for lead. The submittal included a description of the proposed network and commits the State to the implementation of statewide State and Local Air Monitoring Stations (SLAMS) and National Air Monitoring Stations (NAMS), operated in accordance with the criteria given in Subpart B of 40 CFR Part 58, Appendix E, Section 7. Ambient air quality monitoring methodologies used in the SLAMS network will either follow those in 40 CFR Part 58, Appendix E, or will be equivalent. The quality assurance procedures of Appendix A of 40 CFR Part 58 will be followed in operating its SLAMS sites and processing/analyzing the air quality data.

The lead monitoring stations will be reviewed on an annual basis and modified as needed to eliminate unnecessary sites or to correct inadequacies indicated by the annual review. No changes will be made to the network unless prior approval is given by USEPA. The annual SLAMS summary report will be submitted to USEPA by July 1 of each year.

USEPA's original review of the Indiana lead monitoring plan revealed that it met all applicable requirements, with the exception of 40 CFR Part 58, Appendix D, Section 2.7, which requires lead monitoring in the vicinity of significant lead sources. In an October 19, 1983, letter, USEPA informed the State that it was required to install lead monitors in these areas. The State of Indiana has installed lead monitors in certain identified areas as documented in its May 4, 1984, submittal and May 21, 1984, letter (which includes maps showing locations of monitors near stationary sources). In 1986, Indiana notified USEPA that six lead stations were discontinued due to historically low measured values.

In the December 16, 1986, submittal, Indiana provided all lead measurements for the period 1983–1986 (2nd or 3rd quarter). Source-oriented monitors are located near Hammond Lead-Halox, U.S.S. Lead, Refined Metals, and Delco Remy (note, the Delco Remy monitor was shutdown in the 3rd quarter of 1986 due to low monitored values—i.e., less than or equal to 0.12 $\mu g/m^3$ over the past three years). Although Hammond Lead-Halstab (new plant) is near the U.S.S. Lead oriented site, an additional site oriented to this plant is planned for the early spring of 1987. Oxide and Chemical previously operated two lead monitors near its plant during 1981. This limited monitoring data showed attainment of the lead standard. Because the final rule restricts the hours of operation for the Franklin Reactor, the State and USEPA believe that a new monitor is not necessary at this time in the vicinity of Oxide and Chemical.

In addition, a lead monitor is located 0.6 km northwest of Quemetco in Indianapolis. The sampling frequency at this site will be increased to once every day starting January 1987. Because of siting constraints (i.e., wooded area, railroad tracks, and lack of power), it is not practical to locate a site closer to this facility.

Recent lead monitor data show violations of the quarterly lead standard in the vicinity of Hammond Lead, Refined Metals, and U.S.S. Lead. Since U.S.S. Lead shut down in early 1986, no monitored violations have occurred. It is anticipated that the installation of new hooded systems at the Refined Metals plant in Indianapolis will eliminate the violations in the vicinity of this source. The sampling frequency at the Refined Metals site on South Arlington Avenue will be increased to once every two days, starting January 1987.

For the Hammond Lead site, full compliance with the emission limits in the rule is predicted to result in attainment at the Summer Street site. However, 325 IAC 15–1 requires Hammond Lead to investigate further fugitive emissions not regulated by 325 IAC 15–1. The rule requires the development of an alternative control strategy, if necessary, by June 30, 1988. This control strategy will be designed to assure attainment and maintenance of the lead standard and will eliminate any uncertainty as to the adequacy of the current control strategy. The sampling frequency at the Summer Street site will be increased to once every two or three days in early spring 1987.

Action: USEPA is proposing final approval of the revised Indiana Air Quality Surveillance Plan, including the recent deletions.

D. New Source Review (NSR)

In order to satisfy this requirement, USEPA published in the **Federal Register** on November 19, 1986 (51 FR 41876), a notice of proposed rulemaking on Indiana New Source Review (NSR) for lead (Rule 325 IAC 2–1–1). If USEPA ultimately approves this plan, as proposed, this requirement of the Indiana lead plan will be satisfied.

III. Conclusion

USEPA has reviewed the State submittals and is proposing the following:

Study areas	USEPA's proposed action
A. Mobile source related sites:	
1. Frank Borman Expressway (I-80/94) west of Cline Avenue (Indiana 912) to a point east of Indianapolis Boulevard (Indiana 152/US-20) (Lake County).	Approval.
2. Jeffersonville Monitoring Site at Junction of I-65/US-62. (Clark County).	Approval.
3. New Albany—Floyd County.	Approval.
B. Stationary source related sites:	
1. Refined Metals, Inc., Indianapolis—Marion County.	Approval.
2. U.S.S. Lead Refinery, East Chicago—Lake County.	Approval.
3. Oxide and Chemical, Inc., Brazil—Clay County.	Approval.
4. Hammond Lead Products, Hammond—Lake County.	Approval, provided the State submits additional enforceable increments of progress for its additional studies and commits to submit the revised control strategy, if necessary, as a SIP revision.
5. G.M. Delco Remy, Muncie—Delaware County.	Approval.
6. Chrysler Corporation Foundry, Indianapolis—Marion County.	Approval.

Study areas	USEPA's proposed action
7. Quemetco, Indianapolis—Marion County.	Approval, provided an approvable revised State rule is submitted along with an up-to-date attainment demonstration.
C. Other sites:	
1. U.S. Steel, Gary—Lake County.	Approval.
2. Bethlehem Steel, Burns Harbor—Porter County.	Approval.
3. Inland Steel and LTV Steel, East Chicago—Lake County.	Approval.
4. Corning Glass, Bluffton—Wells County.	Approval.
D. Ambient lead monitoring plan.	Approval.
E. New source review	Approval (Subject of separate rulemaking action).

USEPA is proposing for approval the Indiana lead SIP, including 325 IAC 15–1, with the understanding that the State will submit as a revision to its SIP:

(1) A commitment during the public comment period to submit the control programs required by 325 IAC 15–1–3(a)(3) to USEPA as a revision to the Indiana SIP by December 31, 1987.

(2) Additional specific increments of progress for the Hammond Lead Products "further study" to be submitted during the public comment period;

(3) The revised control strategy, if necessary, for Hammond Lead Products, to be submitted on or before December 31, 1988;

(4) A revised 325 IAC 15–1 which provides an enforceable mechanism to prevent Quemetco and other smaller sources, if appropriate, from increasing their lead emissions above 5 tons/year, to be submitted during the public comment period; and

(5) An attainment demonstration for Quemetco consistent with USEPA modeling guidelines, to be submitted during the public comment period.

If USEPA ultimately approves 325 IAC 15–1 and the other requirements in Indiana's lead plan, this approval will not affect in any way the existing SIP requirements as they apply to the sources in the lead plan, i.e., the sources remain bound by the existing TSP, opacity, volatile organic compound, etc. SIP requirements.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) If USEPA ultimately disapproves any portion of Indiana's lead SIP, this too will not have a significant economic impact on a substantial number of small entities, because it will impose no new requirements on any source.

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

Authority: 42 U.S.C. 7401–7642.

Dated: January 30, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 87–8034 Filed 4–9–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–6909]

Proposed Flood Elevation Determinations; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001 through 4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1987, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Childersburg (city), Talladega County	
Coosa River:	
About 1.1 miles downstream of 12th Avenue	*413
About 4000 feet upstream of Norfolk Southern Railway	*414
Talisseehatchee Creek:	
At mouth	*414

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
About 0.7 mile upstream of confluence of Four-mile Branch	*418
Town Creek:	
At mouth	*416
About 1000 feet upstream of Park Lane	*432
Griffin Branch: Within community	*417
Talladega Creek:	
Just downstream of Norfolk Southern Railway	*415
About 1.7 miles upstream of Norfolk Southern Railway	*418

Maps available for inspection at the City Hall, 118 6th Avenue, SW., Childersburg, Alabama.

Send comments to The Honorable B.J. Meeks, Mayor, City of Childersburg, City Hall, 118 6th Avenue, S.W., Childersburg, Alabama 35044.

Demopolis (city), Marengo County

Tombigbee River:	
About 0.9 mile downstream of Demopolis Lock and Dam	*92
About 3.2 miles upstream of Demopolis Lock and Dam	*93
Black Warrior River:	
About 4.4 miles upstream of confluence with Tombigbee River	*93
About 5.3 miles upstream of confluence with Tombigbee River	*94

Maps available for inspection at the City Hall, P.O. Box 580, Demopolis, Alabama.

Send comments to The Honorable Austin Caldwell, Mayor, City of Demopolis, City Hall, P.O. Box 580, Demopolis, Alabama 36732.

Flomaton (town), Escambia County

Big Escambia Creek:	
About 0.6 mile downstream of Louisville & Nashville Railroad	*65
About 1.2 miles upstream of U.S. Highway 31	*78

Maps available for inspection at the City Hall, P.O. Box 632, Flomaton, Alabama.

Send comments to The Honorable Frank Davis, Mayor, Town of Flomaton, City Hall, P.O. Box 632, Flomaton, Alabama 36441.

Jackson (city), Clarke County

East Bassett Creek:	
About 500 feet downstream of Depot Road	*34
About 2.45 miles upstream of Depot Road	*45
Tombigbee River:	
About 1150 feet downstream of Norfolk Southern Railway	*35
About 2.18 miles upstream of Norfolk Southern Railway	*36

Maps available for inspection at the City Hall, P.O. Box 1096, Jackson, Alabama.

Send comments to The Honorable James Arrington, Mayor, City of Jackson, City Hall, P.O. Box 1096, Jackson, Alabama 36545.

Stevenson (city), Jackson County

Bengis Creek:	
About 0.85 mile downstream of Kentucky Street	*607
About 1.17 miles upstream of the Louisville and Nashville Railroad	*618
Crow Creek:	
Just downstream of Lee Highway	*607
About 0.5 mile upstream of the Louisville and Nashville Railroad	*611
Bengis Creek Tributary:	
At mouth	*609
Just downstream of Carroll Street	*619

Maps available for inspection at the City Hall, 296 West Main Street, Stevenson, Alabama.

Send comments to The Honorable Carl Allen, Mayor, City of Stevenson, City Hall, 296 West Main Street, Stevenson, Alabama 35772.

Sylacauga (city), Talladega County

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Upper Shirtee Creek:	
About 750 feet downstream of Old U.S. Highway 280	*517
About 2430 feet upstream of U.S. Highway 280	*544
Tributary No. 1:	
At mouth	*529
About 400 feet upstream of Airport Road	*544
Tributary No. 2:	
At mouth	*539
About 2580 feet upstream of mouth	*545
Tributary No. 3:	
At mouth	*539
About 2750 feet upstream of mouth	*545
Darby Branch:	
About 800 feet downstream of 4th Street	*529
Just downstream of Quarry Road	*574
Just upstream of Quarry Road	*580
Just downstream of U.S. Highway 280	*592
Just upstream of U.S. Highway 280	*599
Just upstream of Pinecrest Road	*631
Big Ditch:	
Just upstream of 8th Street	*530
About 470 feet upstream of Bay Street	*587
Shirtee Creek:	
Just downstream of Odena Road	*465
Just downstream of 6th Street	*533
Crooked Creek:	
About 0.80 mile downstream of State Highway 148	*520
About 0.62 mile upstream of Brickyard Road	*552

Maps available for inspection at the City Hall, P.O. Box 390, Sylacauga, Alabama.

Send comments to The Honorable John Floyd, Mayor, City of Sylacauga, City Hall, P.O. Box 399, Sylacauga, Alabama 35150.

Vernon (city), Lamar County

Yellow Creek:	
About 1.1 miles downstream of State Highway 17	*270
About 1.6 miles upstream of Columbus Avenue East	*293
Tributary No. 1:	
About 1250 feet downstream of Yellow Creek Road	*273
About 2100 feet upstream of State Highway 18	*304
Buck Creek:	
About 1500 feet downstream of State Highway 18	*281
About 2500 feet upstream of State Highway 18	*293
Town Branch:	
About 700 feet downstream of State Highway 17	*288
About 1.6 miles upstream of First Street Northwest	*338

Maps available for inspection at the City Hall, P.O. Box 357, Vernon, Alabama.

Send comments to The Honorable Homer C. Smith, Mayor, City of Vernon, City Hall, P.O. Box 357, Vernon, Alabama 35592.

ARKANSAS

Independence County

Blue Creek:	
At confluence with Miller Creek	*286
Downstream side of State Route 25/233	*302
Approximately 1,600 feet upstream of County Route 97	*341
Pfeiffer Creek:	
At confluence with Miller Creek	*279
Upstream side of County Route 235	*357
40 feet upstream of County Route 87	*392
Polk Bayou:	
At confluence with White River	*266
At State Route 69 bypass	*280
Dry Run Creek:	
At confluence with Polk Bayou	*267
Approximately 1,350 feet upstream of State Route 106	*285
Tributary to Miller Creek:	
At confluence with Miller Creek	*293

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. ^Elevation in feet (NGVD)
Approximately 1,350 feet upstream from confluence with Miller Creek	*297

Maps available for inspection at the County Judge's Office, County Courthouse, Batesville, Arkansas.

Send comments to The Honorable David Wyatt, Independence County Judge, County Courthouse, Batesville, Arkansas 72501.

CALIFORNIA

Orinda (City), Contra Costa County

San Pablo Creek:	
50 feet upstream of Bear Creek Road at EB mud erosion control dam	*340
150 feet above confluence with Lauterwasser Creek	*391
50 feet downstream of Orinda Way	*403
At confluence with Overhill Creek	*477
150 feet downstream of Brookside Road	*526
Lauterwasser Creek:	
At confluence with San Pablo Creek	*390
North crossing at Miner Road	*423
100 feet upstream of Oak Arbor Road	*437
150 feet upstream of Lombardy Lane	*467
3,400 feet upstream of Lombardy Lane	*537
Cascade Creek:	
At confluence with San Pablo Creek	*391
870 feet above confluence with San Pablo Creek	*416
1,920 feet above confluence with San Pablo Creek	*470
Overhill Creek:	
320 feet above confluence with San Pablo Creek at Moraga Way	*475
1,240 feet above confluence with San Pablo Creek	*511
2,000 feet above confluence with San Pablo Creek	*532
Moraga Creek:	
Corporate limits of the City of Orinda at Ivy Drive	*517
100 feet upstream of Lavenida Drive	*548
100 feet upstream of El Camino Moraga	*575
20 feet downstream of Pacific Gas and Electric Access Road	*605

Maps are available for inspection at City Hall, 26 Orinda Way, Orinda, California.

Send comments to Mayor Joseph Harb, City Hall, 26 Orinda Way, Orinda, California 94563.

Sutter County (Unincorporated Areas)

Auburn Ravine: 100 feet downstream from the center of Pleasant Grove Road	*46
Auburn Ravine: At a point 150 feet north of the stream and 150 feet west of the Union Pacific Railroad	*1
Curry Creek: At Center of Keys Road, 450 feet east of its eastern intersection with Pleasant Grove Road	*41
Curry Creek Bypass: 250 feet downstream from the center of Pleasant Grove Road	*39
East Side Canal: 350 feet downstream from the center of Pacific Avenue	*38
Howsley Creek: 250 feet upstream from the center of Pleasant Grove Road	*43
King Slough: 275 feet upstream from the center of Pleasant Grove Road	*45
North King Slough: At center of Catlett Road, 300 feet east of the Union Pacific Railroad	*39
Pleasant Grove Creek: At center of Fifield Road, 450 feet west of its intersection with Pleasant Grove Road	*43
Pleasant Grove Creek Bypass: 150 feet upstream from the center of Pleasant Grove Road	*44
Pleasant Grove Creek Canal: At the intersection of Pacific Avenue and Howsley Road	*37
Bear River: At the intersection of Kempton and Pleasant Grove Roads	*60
Cross Canal: At Center of State Highway 70 and 99, 1 mile south of it intersection with Howsley Road	*30

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Sacramento River: At the intersection of Girdner and Wood Roads	*45
Sutter Bypass: At the intersection of Laurel Avenue and State Highway 99	*35
Maps are available for review at the Planning Department, County Administration Building, 463 Second Street, Yuba City, California 95991.	
Send comments to Mr. Larry Combs, County Administrator, 463 Second Street, Yuba City, California 95991.	
COLORADO	
Hinsdale County	
Lake Fork of Gunnison River:	
2,080 feet upstream of Vine Street, South of Lake City	*8,687
150 feet upstream of Spring Street, 420 feet south of Lake City corporate limits	*8,669
190 feet downstream of Lake City corporate limits	*8,630
2,050 feet downstream of San Juan Drive	*8,590
Henson Creek:	
At Lake City corporate limits	*8,685
900 feet upstream of Gunnison Avenue	*8,686
Maps are available for inspection at the Hinsdale County Courthouse, County Administrator's Office, Henson Street, Lake City, Colorado.	
Send comments to Mr. Robert Skerry, Chairman, Board of Hinsdale County Commissioners, P.O. Box 403, Lake City, Colorado 81635.	
Lake City (City), Hinsdale County	
Lake Fork of Gunnison River:	
Just upstream of Henson Creek at Lake City corporate limits	*8,667
450 feet downstream of 9th Street Bridge	*8,632
Henson Creek:	
250 feet upstream of Lake Fork of Gunnison River	*8,667
Just upstream of Gunnison Avenue	*8,676
At Hinsdale County corporate limits	*8,685
Maps are available for inspection at the Hinsdale County Courthouse, County Administrator's Office, Henson Street, Lake City, Colorado.	
Send comments to Mayor Robert E. Hall, P.O. Box 544, Lake City, Colorado 81235.	
FLORIDA	
Columbia County (Unincorporated Areas)	
Sante Fe River:	
At western county boundary	*34
At confluence of Olustee Creek	*58
Alligator Lake: Entire shoreline	*104
Maps available for inspection at the Building Official's Office, County Annex Building, P.O. Drawer 1529, Lake City, Florida.	
Send comments to The Honorable James Montgomery, Chairman, County Commission, Columbia County, County Annex Building, P.O. Drawer 1529, Lake City, Florida 32056.	
Lake City (City), Columbia County	
Alligator Lake: Along shoreline	*104
Montgomery Outlet Stream:	
At mouth	*104
Just downstream of service road east of South Marion Street	*104
Just upstream of South Marion Street	*109
Just downstream of South First Street	*110
Just upstream of Columbia City Road	*115
About 500 feet upstream of Alamo Drive	*131
Montgomery Lake: Along shoreline	*131
Maps available for inspection at the Building Official's Office, City Building, 150 North Atachua, Lake City, Florida	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Faye Bowling, Acting City Manager, City of Lake City, City Building, 150 North Alachua, Lake City, Florida 32056.	
Suwannee County (Unincorporated Areas)	
Suwannee River:	
At confluence of Santa Fe River	*32
Just upstream of State Road 250	*59
About 3.5 miles upstream of Interstate 75	*85
Santa Fe River:	
At mouth	*32
About 0.7 mile upstream of confluence of Ichetucknee River	*34
Maps available for inspection at the County Coordinator's Office, County Courthouse, 224 Pine Avenue, Live Oak, Florida.	
Send comments to The Honorable Clarence Crowe, Chairman, County Commission, Suwannee County, County Courthouse, 224 Pine Avenue, Live Oak, Florida 32060.	
GEORGIA	
Chattahoochee County (Unincorporated Areas)	
Chattahoochee River:	
About 9.0 miles downstream of confluence of Oswichee Creek	*212
At the confluence of Upatoi Creek	*224
Maps available for inspection at the Office of the Board of Commissioners, County Courthouse, P.O. Box 596, Cusseta, Georgia.	
Send comments to The Honorable Walter F. Rosso, Chairman, Board of County Commissioners, Chattahoochee County, County Courthouse, P.O. Box 596, Cusseta, Georgia 31805.	
ILLINOIS	
Forsyth (Village), Macon County	
Stevens Creek:	
Just upstream of Weaver Avenue	*657
About 2,600 feet upstream of Weaver Avenue	*658
Maps available for inspection at the Village Hall, 424 Elwood, Forsyth, Illinois.	
Send comments to The Honorable Dale E. Auperle, Mayor, Village of Forsyth, Village Hall, 424 Elwood, Forsyth, Illinois 62535.	
ILLINOIS	
Northbrook (village), Cook County	
Underwriters Tributary:	
At mouth	*651
Just upstream of Helen Drive	*666
Techny Drain:	
Just upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad	*640
About 1,200 feet upstream of Fox Glove Drive	*668
South Fork Techny Drain:	
At mouth	*652
About 300 feet upstream of Wood Drive	*666
Maps available for inspection at the Office of the Village Manager, Northbrook Village Hall, 1225 Cedar Lane, Northbrook, Illinois.	
Send comments to The Honorable Lucinda Kesperson, Village President, Village of Northbrook, Village Hall, 1225 Cedar Lane, Northbrook, Illinois 60062.	
KENTUCKY	
Whitesburg (city), Letcher County	
North Fork Kentucky River:	
About 1.06 miles downstream of confluence of Sandlick Creek	*1,124
About 1.4 miles upstream of Palisade Drive	*1,177
Maps available for inspection at the City Hall, Whitesburg, Kentucky.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable James D. Asher, Mayor, City of Whitesburg, City Hall, Whitesburg, Kentucky 41858.	
MAINE	
Durham (town), Androscoggin County	
Androscoggin River:	
200 feet upstream of downstream corporate limits	*81
100 feet upstream of Worumbo Mill Dam	*108
250 feet downstream of confluence of Dyer Brook	*122
500 feet downstream of upstream corporate limits	*127
Maps available for inspection at the New Town Offices, Durham, Maine.	
Send comments to The Honorable Barbara Chesley, Chairman of the Town of Durham Board of Selectmen, Androscoggin County, Town Offices, R.R. 2, Box 1908, Lisbon Falls, Maine 04252.	
Mattawamkeag (town), Penobscot County	
Penobscot River:	
At downstream corporate limits	*191
At confluence of Mattawamkeag River	*202
At upstream corporate limits	*240
Mattawamkeag River:	
At confluence with Penobscot River	*202
Approximately 1.7 miles upstream of Maine Central Railroad Bridge	*212
Maps available for inspection at the Town Vault, Mattawamkeag, Maine.	
Send comments to The Honorable Clifford Davies, First Selectman of the Town of Mattawamkeag, Penobscot County, Town Hall, P.O. Box 260, Mattawamkeag, Maine 04459.	
MICHIGAN	
Au Sable (township), Iosco County	
Au Sable River:	
At mouth	*584
About 1400 feet upstream of River Road	*585
Lake Huron: Shoreline	*584
Maps available for inspection at the Township Hall, 311 Fifth Street, Oscoda, Michigan.	
Send comments to The Honorable Dale Lamrock, Supervisor, Township of Au Sable, Township Hall, 311 Fifth Street, Oscoda, Michigan 48750.	
Hamlin (township), Mason County	
Lake Michigan: Along shoreline	*584
Hamlin Lake: Within community	*595
Maps available for inspection at the Township Hall, Box 647, 3775 North Jebavy Drive, Ludington, Michigan.	
Send comments to The Honorable William L. Organ, Supervisor, Township of Hamlin, Township Hall, Box 647, 3775 North Jebavy Drive, Ludington, Michigan 49431.	
Hillsdale (city), Hillsdale County	
St. Joseph River:	
About 2,800 feet downstream of Mechanic Street	*1,068
About 400 feet upstream of South Street	*1,088
About 450 feet upstream of South Street	*1,097
About 800 feet upstream of Griswold Street	*1,097
Baw Beese Lake: Within community	*1,099
Maps available for inspection at the City Hall, Corner of Broad and Hillsdale, Hillsdale, Michigan.	
Send comments to The Honorable Herbert H. Hine, Mayor, City of Hillsdale, Corner of Broad and Hillsdale, Hillsdale, Michigan 49242.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Sebewaing (village), Huron County	
Saginaw Bay: Within community	*584
Sebewaing River:	
At mouth	*584
At confluence of State Drain	*593
State Drain: Within community	*593
Maps available for inspection at the Village Hall, 108 W. Main, Sebewaing, Michigan.	
Send comments to The Honorable Walter Engeohart, Village President, Village of Sebewaing, Village Hall, 108 W. Main, Sebewaing, Michigan 48759.	
Summit (township), Mason County	
Lake Michigan: Along shoreline	*584
Bass Lake: Along shoreline	*584
Maps available for inspection at the Township Hall, 6019 South U.S. 31, Ludington, Michigan.	
Send comments to The Honorable Edward S. Iteen, Supervisor, Township of Summit, Township Hall, 6019 South U.S. 31, Ludington, Michigan 49431.	
MINNESOTA	
Carver County (unincorporated areas)	
Minnesota River:	
About 3.7 miles downstream of County Highway 9	*725
About 500 feet upstream of State Highway 25	*732
South Fork Crow River:	
About 700 feet upstream of county boundary	*934
Just downstream of County Highway 30	*952
Mapes Creek: Within community	*935
Maps available for inspection at the Planning and Zoning Office, 600 East Fourth Street, Chaska, Minnesota.	
Send comments to The Honorable Earl F. Gnaw, Chairman, County Board, Carver County, 600 East Fourth Street, Chaska, Minnesota 55318.	
Sibley County (unincorporated areas)	
Minnesota River:	
About 1,300 feet downstream of State Highway 25	*730
About 0.8 mile upstream of State Highway 93	*784
Maps available for inspection at the Planning and Zoning Office, P.O. Box 171, Gaylord, Minnesota.	
Send comments to The Honorable Robert Bade, Chairman, County Board, Sibley County, P.O. Box 171, Gaylord, Minnesota 55334.	
MISSOURI	
Bigelow (village), Holt County	
Missouri River: Within community	*866
Maps available for inspection at the Sportman Lodge, Bigelow, Missouri.	
Send comments to The Honorable Georgia Stone, Chairman of the Board of Trustees, Village of Bigelow, Sportman, Missouri 64425.	
Big Lake (village), Holt County	
Missouri River:	
At Intersection of U.S. Highway 159 and State Highway 111	*861
About 1.2 miles south of intersection of State Highway 111 and State Highway 118	*866
Maps available for inspection at the City Building, Big Lake, Missouri.	
Send comments to The Honorable Donald C. Gilmore, Chairman on the Board of Trustees, Village of Big Lake, RR1, Box 227, Bigelow, Missouri 64425.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Chariton County (unincorporated areas)	
Missouri River:	
About 0.4 mile downstream of confluence of Little Chariton River	*628
About 6.7 miles upstream of confluence of Grand River	*651
Maps available for inspection at the County Courthouse, Keytesville, Missouri.	
Send comments to The Honorable Larry Peters, Presiding Commissioner, Chariton County, County Courthouse, Keytesville, Missouri 65261.	
Corning (town), Holt County	
Missouri River: Within community	*879
Maps available for inspection at the Town Clerk's Residence, Rt. 1, Box 39C, Corning, Missouri.	
Send comments to The Honorable John Stout, Chairman of the Board of Trustees, Town of Corning, P.O. Box 553, Corning, Missouri 64435.	
Craig (city), Holt County	
Missouri River: Within community	*871
Maps available for inspection at the City Hall, Craig, Missouri.	
Send comments to The Honorable Frank B. Gates, Mayor, City of Craig, City Hall, Craig, Missouri 64437.	
Forest City (city), Holt County	
Missouri River:	
At Intersection of Burlington Northern railroad and B Street	*850
At Intersection of Burlington Northern railroad and Collins Street	*851
Maps available for inspection at the Mayor's Office, City Hall, P.O. Box 222, Forest City, Missouri.	
Send comments to The Honorable Greg Book, Mayor, City of Forest City, City Hall, P.O. Box 222, Forest City, Missouri 64451.	
Fortescue (town), Holt County	
Missouri River: Within community	*861
Maps available for inspection at the Chairman's Home, Fortescue, Missouri.	
Send comments to The Honorable Quentin Goolsby, Chairman of the Board of Trustees, Town of Fortescue, Fortescue, Missouri 64452.	
Holt County (Unincorporated Areas)	
Missouri River:	
At confluence of Nodaway River	*833
At northern county boundary	*885
Maps available for inspection at the County Clerk's Office, Oregon, Missouri.	
Send comments to The Honorable John Killin, Presiding Commissioner, Holt County, Holt County Courthouse, Oregon, Missouri 64443.	
Lake St. Louis (City), St. Charles County	
Pereque Creek:	
Just downstream of North Outer Road	*491
Just downstream of Lake St. Louis Dam	*492
Just upstream of Lake St. Louis Dam	*505
About 1.2 miles upstream of U.S. Highway 40	*516
Maps available for inspection at the City Hall, 1000 Lake St. Louis Boulevard, Lake St. Louis, Missouri.	
Send comments to The Honorable Steve Linehan, Mayor, City of Lake St. Louis, 1000 Lake St. Louis Boulevard, Lake St. Louis, Missouri 63367.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Mound City (City), Holt County	
Missouri River:	
At the intersection of Interstate 29 and Burlington Northern railroad	*866
About 1000 feet west of intersection of Highway N and North Street	*867
Maps available for inspection at the City Hall, 205 East Sixth Street, Mound City, Missouri.	
Send comments to The Honorable Dellie Elton, Mayor, City of Mound City, City Hall, 205 East Sixth Street, Mound City, Missouri 64470.	
Perry County (Unincorporated Areas)	
Mississippi River:	
At southern county boundary	*370
About 2.0 miles upstream from confluence of Old River	*393
Apple Creek:	
About 2.7 miles downstream of U.S. Highway 61	*388
About 1.7 miles upstream of U.S. Highway 61	*420
Maps available for inspection at the County Courthouse, 15 West Ste. Maries, Perryville, Missouri.	
Send comments to The Honorable Karl Klaus, Presiding Commissioner, Perry County, County Courthouse, 15 West St. Maries, Perryville, Missouri 63775.	
MONTANA	
Lake County	
Lower Swan River:	
Approximately 100 feet upstream of the Flathead County line	*3,034
Approximately 800 feet upstream of Johnson Creek at Swan Lake	*3,073
Upper Swan River:	
At downstream limit of detailed study	*3,095
Approximately 3120 feet downstream of the confluence with Whitetail Creek	*3,120
Approximately 4350 feet downstream of the confluence with South Woodward Creek	*3,172
At confluence with Cedar Creek	*3,233
Approximately 120 feet downstream of the confluence with Lion Creek	*3,358
At the confluence with Jim Creek	*3,417
Approximately 320 feet upstream of the confluence with Alder Creek	*3,430
At Missoula County Line	*3,503
Maps are available for inspection at the Lake County Planning Division, County Courthouse, Polson, Montana.	
Send comments to Mr. Donald Peterson, Chairman, Lake County Board of Commissioners, County Courthouse, Polson, Montana 59860.	
NEW HAMPSHIRE	
Farmington (town), Strafford County	
Cocheco River:	
At downstream corporate limits	*236
At Watson's Cross Road	*256
Approximately 0.6 mile upstream of confluence of Ela River	*314
Mad River:	
Confluence with Cocheco River	*276
At State Route 11	*319
Approximately .4 mile upstream of State Route 11	*360
Approximately 0.3 mile downstream of New River Road	*395
At downstream side of New River Road	*435
Approximately 0.4 mile upstream of New River Road	*483
Approximately 0.7 mile upstream of New River Road	*515
Upstream side of Hornetown Road	*573
Ela River:	
At confluence with Cocheco River	*310

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.5 mile downstream of Spring Street	*336
At upstream side of Spring Street	*365
At upstream corporate limits	*384
Dames Brook:	
At confluence with Cocheco River	*261
Approximately 170 feet upstream of Elm Street	*266
Kicking Horse Brook:	
At confluence with Dames Brook	*266
At downstream side of Winter Street	*277
Approximately 40 feet upstream of Glen Street	*325
Approximately 96 feet upstream of Charles Street	*380
Maps available for inspection at c/o Planning Board, Town Hall, Farmington, New Hampshire.	
Send comments to The Honorable John Scurton, Chairman of the Town of Farmington Board of Selectmen, Strafford County, Town Hall, Farmington, New Hampshire 03835.	
NEW YORK	
Fayette (Town), Seneca County	
Seneca Lake: Entire shoreline within community	*449
Seneca River:	
At eastern corporate limits	*448
Upstream side of State Route 96A	*449
Cayuga Lake: Entire shoreline within community	*386
Maps available for inspection at the Town Clerk's Office, 2932 Route 96, Waterloo, New York.	
Send comments to The Honorable Gail Abbott, Supervisor for the Town of Fayette, Seneca County, 3430 Route 89, Seneca Falls, New York 13148.	
Lodi (Town), Seneca County	
Seneca Lake: Entire shoreline within community	*449
Maps available for inspection in c/o Louis Jennings, Town Clerk, East Seneca Street (10 a.m.–4 p.m., Monday–Friday).	
Send comments to The Honorable Francis Hurd, Supervisor of the Town of Lodi, Seneca County, Box 185, Lodi, New York 14860.	
Ovid (Town), Seneca County	
Cayuga Lake: Entire shoreline within community	*386
Seneca Lake: Entire shoreline within community	*449
Maps available for inspection in c/o Cynthia J. Xavier, Town Clerk, 7122 Orchard Street, Ovid, New York.	
Send comments to The Honorable Lawrence Wilkins, Supervisor for the Town of Ovid, Seneca County, R.D. 2, Box 93, Route 414, Ovid, New York 14521.	
Starkey (Town), Yates County	
Seneca Lake: Entire shoreline within community	*449
Maps available for inspection at the Town Hall, 40 Seneca Street, Dundee, New York.	
Send comments to The Honorable Edward J. Raps, Supervisor for the Town of Starkey, Yates County, 35 Main Street, Dundee, New York 14837.	
Torrey (Town), Yates County	
Seneca Lake: Entire shoreline within community	*449
Keuka Lake Outlet:	
Confluence with Seneca Lake	*449
Downstream side of CONRAIL bridge	*459
At upstream side of Route 14 Bridge	*473
Maps available for inspection at the Torrey Town Clerk's Office, Geneva Street, Dresden, New York.	
Send comments to The Honorable Patrick Flynn, Supervisor for the Town of Torrey, Yates County, Box 280, Dresden, New York 14441.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Varick (Town), Seneca County	
Seneca Lake: Entire shoreline within community	*449
Cayuga Lake: Entire shoreline within community	*386
Maps available for inspection at the Town Clerk's Home, 1736 Route 336, Romubus, New York.	
Send comments to The Honorable Robert Hayssen, Supervisor for the Town of Varick, Seneca County, 2221 Lake Road, Seneca Falls, New York 13148.	
OHIO	
Garfield Heights (City), Cuyahoga County	
Mill Creek:	
About 800 feet downstream of Broadway	*790
Just downstream of McCracken Road	*842
Maps available for inspection at the City Hall, 5555 Turney Road, Garfield Heights, Ohio.	
Send comments to The Honorable Thomas J. Longo, Mayor, City of Garfield Heights, City Hall, 5555 Turney Road, Garfield Heights, Ohio 44125.	
OKLAHOMA	
Tishomingo (City), Johnston County	
Pennington Creek:	
At downstream corporate limits	*640
Upstream side of Twelfth Street	*644
Approximately 100 feet upstream of New Low Water Dam	*660
Approximately 1,000 feet downstream of upstream corporate limits	*665
Pennington Creek Tributary 1:	
Downstream side of Kemp Avenue	*640
100 feet downstream of State Route 22	*651
Maps available for inspection at 201 South Capitol Street, Tishomingo, Oklahoma.	
Send comments to The Honorable Wesley Lemons, Mayor of the City of Tishomingo, Johnston County, 201 South Capitol Street, Tishomingo, Oklahoma 73460.	
Wyandotte (Town), Ottawa County	
Lost Creek: Approximately 250 feet upstream of Lost Creek County highway	*758
Maps available for inspection at the Town Hall, Wyandotte, Oklahoma.	
Send comments to The Honorable Thomas Derwin, Mayor of the Town of Wyandotte, Ottawa County, P.O. Box 251, Wyandotte, Oklahoma 74370.	
PENNSYLVANIA	
Fayette (Township), Juniata County	
Lost Creek:	
Approximately 1,200 feet downstream of State Route 35	*560
Downstream side of State Route 35	*566
Approximately 500 feet upstream of State Route 35	*569
Little Lost Creek:	
Approximately 2,750 feet downstream side of State Route 35	*612
Upstream side of State Route 35	*629
Upstream side of County Route 235	*640
Upstream side of LR34034	*655
Maps available for inspection at c/o Ms. Joyce Hart, Township Secretary, R.D. 1, Cocolamus, Pennsylvania.	
Send comments to The Honorable Delbert Sellers, Chairman of the Township of Fayette Board of Supervisors, Juniata County, P.O. Box 145, McAllisterville, Pennsylvania 17049.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Greenwood (Township), Juniata County	
Cocolamus Creek:	
At downstream corporate limits	*475
Approximately 1,575 feet upstream of downstream corporate limits	*481
Maps available for inspection at the Township Building, Route 235, Greenwood, Pennsylvania.	
Send comments to The Honorable Ronald Chubb, Chairman of the Township of Greenwood Board of Supervisors, Juniata County, R.D. 1, Millerstown, Pennsylvania 17062.	
Lack (Township), Juniata County	
Tuscarora Creek:	
Approximately 1,300 feet downstream of confluence with George Creek	*685
Approximately 160 feet upstream of Legislative Route 34001	*704
Maps available for inspection at the Township Secretary's Office, East Waterford, Pennsylvania.	
Send comments to The Honorable Paul Clouser, Chairman of the Township of Lack Board of Supervisors, Juniata County, R.D. 1, East Waterford, Pennsylvania 17021.	
Tuscarora (Township), Juniata County	
Tuscarora Creek:	
Approximately 2,300 feet downstream of LR 34068	*607
Upstream side of LR 34068	*611
Upstream corporate limits	*613
Laurel Run:	
Approximately 2,000 feet downstream of T-309 (extended)	*603
Downstream side of T-309 (extended)	*633
Approximately 1,350 upstream of State Route 75	*698
Laurel Run (east):	
Side channel approximately 900 feet upstream of Flint Hollow Road	*610
Side channel approximately 600 feet downstream of State Route 75	*665
Laurel Run (west):	
Side channel approximately 100 feet upstream of State Route 75	*678
Side channel approximately 1,200 feet upstream of State Route 75	*695
Maps available for inspection in c/o Elleanor Page, Township Secretary, R.D. #1, Honey Grove, Pennsylvania.	
Send comments to The Honorable Homer Hutchinson, Chairman of the Township of Tuscarora Board of Supervisors, Juniata County, R.D. #1, Honey Grove, Pennsylvania 17035.	
West Perry (Township), Snyder County	
West Branch Mahantango Creek:	
Approximately 240 feet downstream of Legislative Route 34010	*618
Upstream side of State Route 35	*639
Approximately 300 feet upstream of Township Route 306	*665
Maps available for inspection at Mr. Elmer Apple's Residence, Township Secretary, Star Route, Richfield, Pennsylvania.	
Send comments to The Honorable Howard Benner, Chairman of the Township of West Perry Board of Supervisors, Snyder County, R.D. 2, Mt. Pleasant Mills, Pennsylvania 17853.	
TENNESSEE	
Cocke County (Unincorporated Areas)	
French Broad River:	
About 0.7 mile downstream of the confluence of Clay Creek	*1,001

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
About 2.0 miles upstream of Good Hope Branch	*1,063
Pigeon River:	
At mouth	*1,017
Just downstream of Greasy Cove Road	*1,179
Sinking Creek:	
At mouth	*1,031
Just upstream of Norfolk Southern Railway	*1,036
Just downstream of the upstream crossing of U.S. Route 411	*1,112
Just upstream of the upstream crossing of U.S. Route 411	*1,120
At Carson Springs Road	*1,493
Cosby Creek:	
Just downstream of Ball Park Road	*1,321
Just downstream of State Route 32	*1,649
Indian Camp Creek:	
At mouth	*1,403
About 1.4 miles upstream of mouth	*1,547

Maps available for inspection at the County Executive's Office, County Courthouse, Newport, Tennessee.

Send comments to The Honorable Charles Lewis Moore, County Executive, Cocke County, County Courthouse, Newport, Tennessee 37821.

TEXAS

Archer County

Holliday Creek:	
Confluence with Lake Wichita	*986
Downstream side of FM 1954	*1,005
Holliday Creek Tributary:	
Confluence with Holliday Creek	*999
Downstream side of U.S. Route 82 and 277	*1,018
Pecan Creek:	
Confluence with Lake Wichita	*986
At FM 1954	*1,004
Lake Wichita: Entire shoreline within community	*986

Maps available for inspection at the County Courthouse, Archer City, Texas.

Send comments to The Honorable William Holder, Archer County Judge, Archer County Courthouse, Archer City, Texas 76351.

Jacksboro (City), Jack County

Stream LCC-1:	
Confluence with Little Cleveland Creek	*1,020
Approximately 50 feet upstream of Archer Street	*1,084
Stream LCC-1 Diversion Channel:	
Confluence with Stream LCC-1	*1,041
Divergence of Stream LCC-1	*1,049
Stream LCC-2:	
Downstream corporate limits	*1,054
Approximately 50 feet upstream of upstream corporate limits	*1,085
Lost Creek:	
Downstream corporate limits	*983
Confluence of Stream LC-3	*1,032
Approximately 100 feet upstream Abandoned Chicago Rock Island Pacific Railroad	*1,051
Lake Jacksboro Spillway Channel:	
Confluence with Lost Creek	*983
Lake Jacksboro Spillway	*1,023
LC-1:	
Upstream side of County Road	*1,034
Upstream corporate limits	*1,044
Stream LC-2:	
Confluence with Lost Creek	*1,025
Approximately 2,000 feet upstream of confluence with Lost Creek	*1,070
Stream LC-3:	
Confluence with Lost Creek	*1,032
Approximately 200 feet upstream of upstream corporate limits	*1,092
Rock Quarry Reservoir:	
Confluence with Stream LC-3	*1,075
Divergence from Stream LC-3	*1,084

Maps available for inspection at the City Hall, Archer Street, Jacksboro, Texas.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable F.C. Herd, Mayor of the City of Jacksboro, Jack County, P.O. Box 254, Jacksboro, Texas 76056.	

UTAH

City of Duchesne, Duchesne County

Strawberry River: At South Boundary Street	*5,498
Duchesne River: 120 feet upstream from center of Center Street	*5,518
Indian Creek: 100 feet upstream from confluence with Strawberry River	*5,514

Maps are available for review at the Planning Department, 165 S. Center, Duchesne, Utah 84066.

Send comments to The Honorable Rojean Addley, Mayor, Duchesne City Corporation, 165 S. Center, Duchesne, Utah 84021.

City of Manti, Sanpete County

South Creek:	
Intersection of Main Street (U.S. Highway 89) and 300 South Street	#1
Intersection of 200 South Street and 400 West Street	#1
Intersection of 400 South Street and 400 West Street	#1

Maps are available for inspection at Office of City Recorder, 50 South Main Street, Manti, Utah.

Send comments to Mayor Marjorie Peterson, 50 South Main Street, Suite #1, Manti, Utah 84642.

VERMONT

Barnet (Town), Caledonia County

Connecticut River:	
Approximately 2,400 feet downstream of McIndoes Dam	*433
Upstream side of McIndoes Dam	*466
At confluence of Passumpsic River	*470
Approximately 240 feet downstream of Commerford Dam	*484
Approximately 1.1 miles upstream of Commerford Dam	*659
Passumpsic River:	
At confluence with Connecticut River	*470
Upstream side of East Barnet Dam	*497
Approximately 300 feet downstream of Passumpsic Dam	*513
Approximately 925 feet upstream of Passumpsic Dam	*534
Stevens River:	
At confluence with Connecticut River	*468
Approximately 100 feet upstream of State Route 8	*557
Approximately 450 feet upstream of Town Highway 56	*648
Approximately 70 feet upstream of Mill Dam	*745
Approximately 150 feet upstream of State Route 1	*768
Upstream side of Harvey Lake Dam	*895

Maps available for inspection at the Town Clerk's Office, Town Office, Barnet, Vermont 05821.

Send comments to The Honorable Rodney Mitchell, Chairman of the Town of Barnet Board of Selectmen, Caledonia County, Town Office, Barnet, Vermont 05821.

Norwich (Town), Windsor County

Connecticut River:	
At downstream corporate limits	*388
At upstream corporate limits	*399
Ompompanuosuc River:	
Approximately 200 feet downstream of State Route 132	*398
Approximately 40 feet upstream of the upstream corporate limits	*412

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Bloody Brook:	
Approximately 50 feet downstream of Elm Street	*465
Approximately 1.1 miles upstream of Turnpike Road (5th upstream crossing)	*831
New Boston Brook:	
Approximately 3,450 feet upstream of confluence with Bloody Brook	*728
Approximately 1.2 miles upstream of confluence with Bloody Brook	*737

Maps available for inspection at the Town Clerk's Office, Tracy Hall, Norwich, Vermont.

Send comments to The Honorable Morgan Goodrich, Chairman of the Town of Norwich Board of Selectmen, Windsor County, P.O. Box 376, Norwich, Vermont 05055.

WASHINGTON

Asotin (City), Asotin County

Asotin Creek:	
140 feet downstream of State Highway 129 (First Street)	*752
Above Second Street	*761
Above Costley Lane Bridge	*775
At Western corporate limits, 660 feet above Costley Lane Bridge	*777
Asotin Creek Right Overbank: Between First and Second Streets	#1

Maps available for inspection at City Hall, 130 Second Street, Asotin, Washington.

Send comments to Mayor Robert Alexander, City Hall, 130 Second Street, Asotin, Washington 99402

Asotin County

Grande Ronde River:	
700 feet above center line of Snake River	*834
Approximately 1.1 miles above center line of Snake River	*848
Approximately 2.1 miles above center line of Snake River and 170 feet from Section Line between Sections 23 & 24	*863
Asotin Creek:	
140 feet downstream of State Highway 129 (First Street)	*752
Above Costley Lane Bridge	*775
At upstream side of Morgan Road Bridge	*815
At Unnamed Bridge approximately 1.2 miles above Morgan Road Bridge	*891
120 feet below confluence of George Creek	937

Maps are available for inspection at the Asotin County Courthouse, 135 Second Street, Asotin, Washington.

Send comments to Mr. Neil Ausman, Asotin County Commissioner, P.O. Box 250, Asotin, Washington 99402.

WYOMING

Evanston (City), Uinta County

Bear River:	
Approximately 4000 feet downstream of Avenue C at corporate limits	*6698
Just downstream of Holland Drive	*6727
Approximately 100 feet upstream of County Road	*6738
Approximately 150 feet upstream of Route 89	*6744
Just downstream of Interstate 80	*6766
Approximately 3000 feet upstream of Interstate 80	*6785

Maps are available for inspection at the Assistant Engineer's Office, 33 Independence Circle, Evanston, Wyoming.

Send comments to Mayor Dennis Ottley, 1200 Main Street, Evanston, Wyoming 82930.

The proposed modified base (100-year) flood elevations for selected locations are:

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	Carbon Hill, (City), Walker County.	Lost Creek	About 0.5 mile downstream of U.S. Highway 78	*402	*402
			About 1.2 miles upstream of Howard Road	None	*425
		Poplar Tributary	About 0.5 mile downstream of Widow's Lane Road	None	*402
			Just downstream of Poplar Street	None	*428
			Just upstream of Poplar Street	None	*446
			About 850 feet upstream of 8th Avenue	None	*476
		Allen Creek	At mouth	None	*418
			About 1450 feet upstream of Nubbin Ridge Road	None	*424
Maps available for inspection at the City Hall, P.O. Drawer 459, Carbon Hill, Alabama.					
Send comments to The Honorable H.V. Atkins, Mayor, City of Carbon Hill, City Hall, P.O. Drawer 459, Carbon Hill, Alabama 35549.					
Arizona	City of Prescott, Yavapai County	Willow Creek Reservoir Tributary	Willow Creek Road	*5,156	None
			1.0 mile above Willow Creek Road	*5,250	None
			1.6 miles above Willow Creek Road	*5,305	None
			2.2 miles above Willow Creek Road	*5,365	None
			2.7 miles above Willow Creek Road	*5,419	None
		Willow Creek Tributary	At confluence with Willow Creek	*5,197	None
			0.3 mile above confluence with Willow Creek	*5,218	None
			0.41 mile above confluence with Willow Creek	*5,228	None
			Upstream side of Pleasant Valley Road Bridge	*5,246	None
			0.07 mile above Horizon Hills Road	*5,251	None
		Willow Creek (with levee)	Downstream of corporate limits	*5,167	None
			0.18 mile above Willow Creek Road Bridge	*5,173	None
			Lorraine Drive	*5,187	None
		Willow Creek (without levee)	Downstream corporate limits	*5,167	*5,167
			0.18 mile above Willow Creek Road Bridge	*5,174	*5,174
			0.55 mile above Willow Creek Road Bridge	*5,188	*5,186
			1.55 miles above Willow Creek Road Bridge	*5,226	5,226
			Upstream corporate limits	*5,245	*5,243
Maps are available for inspection at the City Engineer's Office, 221 South Cortez Street, Prescott, Arizona.					
Send comments to Mayor Jerri Wagner, P.O. Box 2059, Prescott, Arizona 86302.					
California	Colton (City), San Bernardino County.	Warm Creek	City of Colton Corporate Limits	none	#960
			Upstream of San Bernardino Freeway	none	#960
			Downstream of San Bernardino Freeway	none	#957
			Southern Pacific Railroad	none	#957
	Reche Canyon Channel	City of Colton Corporate limits (most upstream limit of study).	*1304	*1,304	
			Mobile Home Road	*1244	*1,244
			Barton Road	*1041	*1,041
			Confluence with San Timoteo Wash A Baseline	*930	*930
			Confluence with Santa Ana River	*925	*925
		San Timoteo Wash A	Hunts Lane	none	*934
			Confluence with San Timoteo Wash B Baseline	none	*966
			Interstate 15	none	*962
			Mt. Vernon Avenue	none	*939
			Confluence with Reche Canyon Channel	none	*939
		San Timoteo Wash B	Confluence with San Timoteo Wash A	none	*966
			Interstate 15	none	*962
			Limit of Study	none	*952
Maps are available for inspection at City Hall, 650 N. La Cadena Drive, Colton, California.					
Send comments to Mayor Robert Huntoon, 650 N. La Cadena Drive, Colton California 92324.					
California	City of Napa, Napa County	Napa River	Downstream corporate limits, 1.8 miles downstream of State Highway 12.	*9	*7
			Just downstream of Imola Avenue	*10	*12
			Just upstream of Third Street	*17	*19
			Approximately 200 feet upstream of Lincoln Avenue	*24	*25
			Approximately 1000 feet downstream of the confluence with Milliken Creek:		
			—east of Levee	*25	*27
			—west of levee	*25	*26

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just downstream of Transcas Road (this location was formerly outside of the corporate limits):		
			—east of levee	None	*30
			—west of levee	None	*28

Maps are available for inspection at the City of Napa Public Works Department, Napa California.
Send comments to Mayor Robert Pelusi, City Hall, P.O. Box 660, Napa, California, 94559.

California	City of Sacramento Sacramento County	Sacramento River	Approximately 700 feet downstream of Pioneer Memorial Bridge.	None	*30
			At downstream corporate limits	None	*24
		Morrison Creek	At Western Pacific Railroad	*13	*15
			At Meadowview Road	*15	*16
			At Franklin Boulevard	*16	*17
			Approximately 400 feet upstream of Stockton Boulevard.	*24	*24
			Just downstream of Logan Street Extention	None	*28
			At Florin Perkins Road	*41	*40
			Just downstream of Central California Traction Railroad.	*42	*43
			Approximately 300 feet downstream of Elk Grove Road.	None	*46
		Elder Creek	Just downstream of Franklin Boulevard	*16	*17
			Approximately 200 feet downstream of Center parkway	*18	*20
			Just downstream of U.S. highway 99	*20	*23
		Florin Creek	Approximately 150 feet downstream of Franklin Boulevard.	*16	*17
			Just downstream of Brookfield Drive	*17	*18
			Just upstream of Center Parkway	*18	*20
			Just downstream of Florin Perkins Road	*36	*37
		Laguna Creek	Just upstream of Franklin Boulevard	*18	*18
			Approximately 150 feet downstream of Sheldon Road	*22	*23
		Unionhouse, Creek	Just downstream of Franklin Boulevard	*15	*16
			Approximately 300 feet upstream of Center Parkway	*18	*20
			Approximately 120 feet upstream of U.S. Highway 99	*24	*26
			Just downstream of Stockton Boulevard	*26	*27

Maps are available for inspection at City Hall, Department of Public Works, 915 I Street, Room 207, Sacramento, California.
Send comments to Mayor Anne Rudin, City Hall, 915 I Street, Room 205, Sacramento, California 95814.

California	City of Stockton, San Joaquin County.	San Joaquin River	At downstream corporate limits	None	*7
			At Navy Drive	*8	*8
			Just upstream of State Highway 4	*11	*11
			Along Atchison Topeka and Santa Fe Coal Road on Roberts Island.	None	*7
			In North Stockton at the intersection of March Lane and Quail Lakes Drive.	None	*7
			Wright Tract between the Corporate limits and Fourteen Mile Slough.	None	*7
			Along Mariners Drive North of Lower Mosher Creek	None	*7
			In North Stockton at he intersection of Wagner Heights Road extended and an unnamed road located approximately 850 feet southwest of the intersection of Wagner Heights Road and Lucilie Avenue.	None	*7
		Calaveras River	At the intersection of Pershing Avenue and Monterey Avenue.	None	*11
			At the intersection of Buena Vista Avenue and Lucerne Avenue.	None	*8

Maps are available for inspection at the Department of Public Works, 425 N. El Dorado Street, Stockton, California.
Send comments to Mayor Barbara Fass, City Hall, 425 N. El Dorado Street, Stockton, California 95202.

Hawaii	Hawaii County	Waikoloa Stream	Approximately 7,350 feet downstream of Lindsey Road	None	*2,547
			Approximately 50 feet downstream of Lindsey Road	None	*2,668
			Approximately 20 feet downstream of Kawahae-Waimea Road.	None	*2,676
			Approximately 5,450 feet upstream of Kawahae-Waimea Road.	None	*2,875
		Kamuela Stream No. 1	At confluence with Waikoloa Stream	None	*2,674
			Approximately 20 feet upstream of Kamamalu Street	None	*2,725
			Approximately 1,650 feet upstream of Kamamalu Street.	None	*2,748
		Waiakea Stream	At Kilauea Avenue	*7	*10
			Approximately 10 feet downstream of Komohana Street.	None	*313
			Approximately 100 feet upstream of Kawailani Street	None	*471
			Approximately 1,580 feet upstream of Kupulau Road	None	*628
		Waiakea Tributary No. 1	At confluence with Waiakea Stream	None	*312
			400 feet upstream of Komohala Drive	None	*368
			200 feet upstream of Malanani Place	None	*385
			Approximately 2,480 feet upstream of Malanani Drive	None	*440
		Waiakea Tributary No. 2	At confluence with Waiakea Stream	None	*321
			At centerline of Komohala Drive	None	*370
			Approximately 3,000 feet upstream of Komohala Drive	None	*441
		Waiakea Tributary No. 3	Approximately 20 feet upstream of confluence with Waiakea Stream.	None	*361
			Approximately 2,700 feet upstream of confluence with Waiakea Stream.	None	*402

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 5,200 feet upstream of confluence with Waiakea Stream.	None	*475
		Palai Stream	Approximately 160 feet upstream of confluence with Waiakea Pond.	None	*10
			20 feet upstream of West Kawili Street	None	*41
			At Kahaopea Road	None	*89
			At confluence with Four Mile Creek	None	*140
			Approximately 70 feet upstream of Kinoole Street	None	*197
		Palai Stream (Above Haihai Street)	100 feet upstream of Haihai	None	*460
			50 feet upstream of Leimamo Street	None	*516
			30 feet upstream of Alaloa Road	None	*580
			Approximately 1,130 feet upstream of Akoli Street	None	*649
		Palai Stream A	Approximately 1,930 feet downstream of Momi Street	None	*582
			80 feet downstream of Momi Street	None	*620
			Approximately 650 feet upstream of Ainaola Drive	None	*650
		Palai Stream B	At confluence with Palai Stream	None	*564
			100 feet upstream of Momi Street	None	*624
		Palai Stream C	At Haihai Street	None	*563
			Approximately 900 feet upstream of Kupuleu Road	None	*631
		Palai Stream D	At confluence with Palai Stream	None	*580
			Approximately 2,500 feet upstream of confluence with Palai Stream.	None	*690
		Palai Stream E	At confluence with Palai Stream	None	*572
			Approximately 1,200 upstream of Alaloa Road	None	*649
		Palai Stream F	At confluence with Palai Stream	None	*500
			840 feet upstream of confluence with Palai Stream	None	*537
		Four mile Creek	At confluence with Palai Stream	None	*140
			50 feet downstream of Kanoelehua Avenue	None	*186
			At confluence of Four Mile Creek Tributary No. 1	None	*203
			540 feet upstream of confluence with Four Mile Creek Tributary No. 2.	None	*285
			Approximately 2,550 feet upstream of confluence with Four Mile Creek Tributary No. 2.	None	*370
			650 feet upstream of Ainalako Road	None	*540
		Four Mile Creek Tributary No. 1	At confluence with Four Mile Creek	None	*203
			Approximately 1,600 feet upstream of confluence with Four Mile Creek.	None	*245
		Four Mile Creek Tributary No. 2	2,000 feet upstream of confluence with Four Mile Creek.	None	#1
		Four Mile Creek Tributary No. 3	At confluence with Four Mile Creek	None	*527
			930 feet upstream of Ainalako Road	None	*547
		Honokaa Drainage No. 1	100 feet downstream of Mamane Street	None	*1,091
			70 feet upstream of Mamalahoa Highway	None	*1,340
			970 feet upstream of Mamalahoa Highway	None	*1,422
		Honokaa Drainage No. 2	350 feet downstream of Koa Street	None	*1,012
			40 feet upstream of Lehua Street	None	*1,254
			930 feet upstream of Lehua Street	None	*1,374
		Honokaa Drainage No. 3	60 feet downstream of Mamane Street	None	*1,096
			3,680 feet upstream of Mamane Street	None	*1,457
		Honokaa Drainage A	90 feet downstream of Mamane Street	None	*1,069
			150 Feet upstream of Mamalahoa Highway	None	*1,269
		Honokaa Drainage B	75 feet upstream of Mamane Street	None	*1,095
			400 feet upstream of Ohia Street	None	*1,153
		Honokaa Drainage C	170 feet downstream of Mamane Street	None	*1,087
			130 feet upstream of Mamane Street	None	*1,112
		Honokaa Drainage D	Approximately 1,360 feet downstream of Mamalohoa Highway.	None	*1,186
			Approximately 950 feet downstream of Mamalahoa Highway.	None	*1,228
		Keopu Drainageway	60 feet downstream of Alii Drive	None	*9
			40 feet upstream of Hawaii Belt Road	None	*222
			Approximately 2,350 feet downstream of Mamalahoa Highway.	None	*1,140
			25 feet upstream of Mamalahoa Highway	None	*1,520
			1,970 feet upstream of Mamalahoa Highway	None	*1,814
		Keopu Drainageway	410 feet downstream of Alii Overflow Drive	None	*10
			60 feet upstream of Hawaii Belt Road	None	*167
			At divergence from Keopu Drainageway	None	*563
		Hienaloli Drainageway	340 feet upstream of Kuakini Highway (State Highway 11).	None	*49
			40 feet upstream of Hawaii Belt Road	None	*250
			15 feet upstream of Mamalohoa Highway	None	*1,492
			3,060 feet upstream of Mamalahoa Highway	None	*1,860
		Hienaloli Drainageway	At confluence with Hienaloli Drainageway	None	*150
		Splitflow	270 feet upstream of Hawaii Belt Road	None	*262
		Waiaha	Centerline of Alii Drive	None	*16
			60 feet downstream of Hawaii Belt Road	None	*357
			20 feet upstream of Mamalahoa Highway	None	*1,500
			3,240 feet upstream of Mamalahoa Highway	None	*1,978
		Waiaha Drainageway	At confluence with Waiaha Drainageway	None	*1,447
		Tributary	30 feet upstream of Mamalahoa Highway	None	*1,500
			2,085 feet upstream of Mamalahoa Highway	None	*1,805
		Waiaha Drainageway	At confluence with Waiaha Drainageway	None	*357
		Splitflow No. 1	At centerline of Hualalai Road	None	*432
			1,820 feet upstream of Hualalai Road	None	*528
		Waiaha Drainageway	640 feet downstream of Alii Drive	None	*11
		Splitflow No. 2	100 feet upstream of Hawaii Belt Road	None	*315
			At divergence from Waiaha Drainageway	None	*587

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Waiaha Drainageway	At confluence with Waiaha Drainageway	None	*41
		Splitflow No. 3	50 feet upstream of Kuakini Highway (State Highway 11).	None	*137
			At divergence of Waiaha Drainageway	None	*166
		Holualoa Drainageway	45 feet upstream of Alii Drive	None	*11
			60 feet upstream of Hawaii Belt Road	None	*322
			20 feet downstream of Hualalai Road	None	*980
			2,935 feet upstream of Mamalahoa Highway	None	*1,704
		Holualoa Drainageway Tributary	At confluence with Holualoa Drainageway	None	*1,193
			380 feet upstream of Mamalahoa Highway	None	*1,392
		Horseshoe Bend Drainageway	At confluence with Holualoa Drainageway	None	*164
			70 feet downstream of Hawaii Belt Road	None	*340
			15 feet upstream of Hualalia Road	None	*870
			50 feet upstream of Mamalahoa Highway	None	*1,452
			720 feet upstream of Mamalahoa Highway	None	*1,579
		Kaumalumalu Drainageway	20 feet downstream of Alii Drive	None	*12
			At centerline of Kuakini Highway (State Highway 11)	None	*452
			15 feet upstream of Mamalahoa Highway	None	*1,082
			2,740 feet upstream of Mamalahoa Highway	None	*1,538
		South Kona Watercourse No. 1	At mouth	None	*14
			At centerline of Mamalahoa Highway	None	*1,512
			Approximately 6,390 feet upstream of Mamalahoa Highway.	None	*2,184
		South Kona Watercourse No. 3	At mouth	None	*14
			20 feet upstream of Mamalahoa Highway	None	*1,380
			Approximately 7,250 feet upstream of Mamalahoa Highway.	None	*2,224
		South Kona Watercourse No. 7	At confluence with South Kona Watercourse No. 8	None	*440
			At centerline of Mamalahoa Highway	None	*1,445
			Approximately 5,990 feet upstream of Mamalahoa	None	*2,678
		South Kona Watercourse No. 8	95 feet above mouth	None	*15
			At centerline of Mamalahoa Highway	None	*1,420
			Approximately 5,620 feet upstream of Mamalahoa Highway.	None	*2,714
		South Kona Watercourse No. 19	At confluence with South Kona Watercourse No. 20	None	*720
			20 feet upstream of Mamalahoa Highway	None	*964
			Approximately 2,820 feet upstream of Mamalahoa Highway.	None	*1,395
		South Kona Watercourse No. 20	25 feet upsteam of mouth	None	*10
			At centerline of Mamalahoa Highway	None	*928
			Approximately 2,750 feet upstream of Mamalahoa Highway.	None	*1,340
		South Kona Watercourse No. 24	At confluence with South Kona Watercourse No. 25	None	*680
			At centerline of Mamalahoa Highway	None	*866
			Approximately 1,850 feet upstream of Mamalahoa Highway.	None	*1,131
		South Kona Watercourse No. 25	100 feet upstream of mouth	None	*9
			At centerline of Hookena Road	None	*400
			Approximately 1,200 feet upstream of Mamalahoa Highway.	None	*1,065
Maps are available for inspection at Hawaii County Department of Public Works, 25 Aupuui Street, Hilo, Hawaii.					
Send comments to Mayor Dante Carpenter, Hawaii County Office Building, 25 Aupuui Street, Hilo, Hawaii 96745.					
North Dakota	Enderlin (City), Ransom County	Maple River	At upstream face of County Road 55	None	*1,075
			At downstream of face State Highway 46	*1,085	*1,086
			At a point 1,720 feet north of a point 800 feet northwest along Soo Line Railroad from its crossing with State Highway 46.	None	*1,090
		South Branch Maple River	At a point 200 feet downstream from the downstream face of Railway Street.	*1,081	*1,080
			At upstream face of Railway Street	*1,081	*1,082
			At a point 800 feet west of a point 200 feet south along County Road 5 from its intersection with County Road 14.	None	*1,088
Maps are available for review at the Enderlin City Hall, 327 Railway Street, Enderlin, North Dakota.					
Send comments to The Honorable Edward G. Morrow, Mayor, City of Enderlin, P.O. Box 65, Enderlin, North Dakota 58072.					
Tennessee	Town of Newport, Cocke County	Pigeon River	About 1.9 miles downstream of McMahan Street	None	*1,034
			About 0.8 mile upstream of Broadway	*1,068	*1,067
		Sinking Creek	At mouth	None	*1,031
			About 0.43 mile upstream of Broadway	None	*1,056
Maps available for inspection at the City Hall, Newport, Tennessee.					
Send comments to The Honorable Jeanne Wilson, Mayor, Town of Newport, City Hall, Newport, Tennessee 37821.					
Texas	Missouri City, City, Fort Bend and Harris Counties.	Mustang Bayou	Approximately .30 mile upstream of Turtle Creek Drive	*76	*75
		Fondren Division Channel	At downstream corporate limits	None	*61
			Approximately 1,700 upstream of McLain Boulevard	None	*65
		Brazos River	West side of Missouri Pacific Railroad at southernmost corporate limits.	*65	*64
		Oyster Creek	At upstream corporate limits	None	*67
Maps available for inspection at the City Hall, 1522 Texas Parkway, Missouri City, Texas (hours 9-5 Monday-Friday).					
Send comments to The Honorable John Knox, Mayor of the City of Missouri City, Fort Bend and Harris Counties, P.O. Box 666, Missouri City, Texas 77459.					
Vermont	Lyndon, Town, Caledonia County	Passumpsic River	Upstream side of Lyndonville Electric Company Dam	*680	*677

PROPOSED MODIFIED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 150 feet downstream of confluence of Hawkins Brook.	*686	*681
			Approximately 75 feet upstream of U.S. Route 5 (Chapel Street).	*707	*702
			Approximately 670 feet upstream of State Route 122 (Central Street).	*706	*704
			Approximately 40 feet downstream of Canadian Pacific Railroad (first upstream crossing).	*715	*711
			At confluence of West Branch Passumpsic River	*716	*713
		East Branch Passumpsic River	At State Route 114	*717	*713
			Approximately 1,200 feet upstream of confluence of Mountain Brook.	*778	*773
		West Branch Passumpsic River	At confluence with Passumpsic River	*716	*713
		Calendar Brook	At confluence with West Branch Passumpsic River	None	*728
			Approximately 0.5 mile upstream of U.S. Route 5	*738	*735
		Hawkins Brook	At confluence with Passumpsic River	*686	*681
			At Town Highway 6 (Severence Hill Road)	*707	*706
		Millers Run	At confluence with Passumpsic River	*709	*705
			Approximately 100 feet upstream of Interstate Route 91.	*714	*711
			Approximately 50 feet upstream of Town Highway 31	*718	*713
			At Town Highway 26	*724	*720
		Wheelock Branch Brook	At confluence with Passumpsic River	*708	*703
			Upstream side of Mill Street	None	*722

Maps available for inspection at the Town Clerk's Office, Lyndon, Vermont.

Send comments to The Honorable Robert D. Lawrence, Town Clerk of Lyndon, Caledonia County, P.O. Box 167, Lyndon, Vermont 05851.

	Weathersfield (Town), Windsor County.	Connecticut River	At downstream corporate limits	None	*312
			Approximately 1,600 feet upstream of Downer Hill Road (extended).	None	*315
			At upstream side of State Route 103 bridge	None	*319
			At upstream corporate limits	None	*320
		Black River	Approximately 460 feet downstream of State Route 106 Bridge.	None	*532
			Approximately 4,980 feet downstream of Covered Bridge.	None	*552
			Approximately 1,860 feet upstream of Covered Bridge	None	*600
			At upstream corporate limits	None	*625
		North Branch Black River	Approximately 1,025 feet downstream of State Route 131.	None	*561
			Downstream side of Little Ascutney Road bridge	None	*599
			Upstream side of Ascutney Basin Road bridge	None	*626
			Approximately 100 feet upstream of upstream corporate limits.	None	*654

Maps available for inspection at the Town Offices, Ascutney, Vermont.

Send comments to The Honorable Robert Carney, Chairman of the Town of Weathersfield Board of Selectmen, Windsor County, Town Hall, Drawer E, Ascutney, Vermont 05030.

Issued: April 2, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-8012 Filed 4-9-87; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

45 CFR Part 503

The Freedom of Information Reform Act of 1986; Proposed Fee Schedule and Guidelines

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Notice and request for public comment on Proposed Guidelines and Fee Schedule implementing certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570.

SUMMARY: Under the terms of the Freedom of Information Reform Act of 1986, the Foreign Claims Settlement Commission of the United States ("the Commission") is required to promulgate for public notice and comment a proposed new schedule of fees to be charged and guidelines to be followed in its processing of requests for records under the Freedom of Information Act. As required by the legislation, the Commission has developed these proposed regulations pursuant to, and in conformity with, the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget on pages 10012-10019 of the **Federal Register** on March 27, 1987.

DATE: Comments must be received before April 17, 1987.

ADDRESS: Send comments to the Foreign Claims Settlement Commission of the United States, 1111 20th Street, NW., Room 400, Washington, DC 20579.

FOR FURTHER INFORMATION CONTACT: David E. Bradley 202-653-5883.

For the reasons set out in the preamble, 45 CFR Part 503 is amended as follows:

PART 503—[AMENDED]

1. The authority citation for 45 CFR Part 503 is amended by adding the following:

Authority: Sec. 1803, Pub. L. 99-570, 100 Stat. 3207 (5 U.S.C. 552); 52 FR 10012-10019.

2. Section 503.14 of Chapter V of Title 45 of the *Code of Federal Regulations* is proposed to be revised as follows:

§ 503.14 Fees for services.

The following provisions shall apply in the assessment and collection of fees for services rendered in processing requests for disclosure of Commission records under this Part.

(a) *Fee for duplication of records.* $0.15 per page.

(b) *Search and review fees.* (1) Searches for records by clerical personnel—$2.00 per quarter hour, including time spent searching for and copying any record.

(2) Search for and review of records by professional and supervisory personnel—$5.50 per quarter hour spent searching for any record or reviewing a record to determine whether it may be disclosed, including time spent in copying any record.

(c) *Certification and validation fee.* $1.00 for each certification, validation or authentication of a copy of any record.

(d) *Imposition of fees*—(1) *Commercial use requests.* Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Commission personnel in searching for the requested record and in reviewing the record to determine whether it should be disclosed, and for the cost of each page of duplication. "Commercial use" is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The request also must reasonably identify the records sought.

(2) *Requests from representatives of news media.* Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages: *Provided,* however, that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category if such person can demonstrate a solid basis for expecting publication by a news organization.

(3) *Requests from educational and non-commercial scientific institutions.* Where a request seeks disclosure of records to an educational or non-commercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; Provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or non-commercial scientific research programs. "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education, which operates a program or programs of scholarly research. "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, within the meaning of paragraph (d)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(4) *All other requests.* Where a request seeks disclosure of records to a person or entity other than one coming within paragraphs (d)(1), (2) and (3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(e) *Aggregating of requests.* If there exists a solid basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(f) *Unsuccessful searches.* Except as provided in paragraph (d) of this section, the cost of searching for a requested record shall be charged even if the search fails to locate such record or it is determined that the record is exempt from disclosure.

(g) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this Part within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in section 3717 of Title 31, United States Code.

(h) *Advance payments.* (1) If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than $250.00, the requester may be required to pay the fees in advance in order to obtain completion of such processing.

(2) If a requester has previously failed to make timely payment (i.e., within 30 days of billing date) of fees charged under this Part, the requester may be required to pay such fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request, in order to obtain processing of such pending or new request.

(3) With regard to any request coming within paragraphs (h) (1) and (2) of this section, the administrative time limits set forth in §§ 503.10 and 503.11 of this part will begin to run only after the requisite fee payments have been received.

(i) *Non-payment.* In the event of non-payment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer credit reporting agencies and referral to collection agencies, may be utilized to obtain payment.

Bohdan A. Futey,

Chairman.

[FR Doc. 87-8153 Filed 4-9-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources (Mackerels)

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

ACTION: Notice of availability of an FMP amendment and request for comments.

SUMMARY: NOAA issues this notice that the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) have resubmitted Amendment 2 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources (Mackerels) (FMP) for review by the Secretary of Commerce (Secretary) and are requesting comments from the public. Copies of the amendment may be obtained from the addresses below.

DATE: Comments on the amendment should be submitted on or before May 5, 1987.

ADDRESSES: All comments should be sent to Craig R. O'Connor, Acting Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, FL 33702. .

Copies of the FMP, the amendment, and supporting documentation are available upon request from the South Atlantic Fishery Management Council,

Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407–4699; and the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 W. Kennedy, Boulevard, Tampa, FL 33609.

FOR FURTHER INFORMATION CONTACT: William N. Lindall (Regional Plan Coordinator), 813–893–3721.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act requires that each regional fishery management council submit any fishery management plan or amendment it prepares to the Secretary for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the FMP or amendment, must immediately publish a notice that it is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the FMP or amendment.

This amendment proposed measures to minimize overfishing of the Spanish mackerel stock in the Gulf of Mexico and to rebuild and maintain the stock at a maximum sustainable yield level through flexible management procedures. On June 29, 1984 (49 FR 26809), the Environmental Protection Agency published a notice of availability of a draft environmental impact statement for the FMP.

A notice of availability for Amendment 2 was published on February 18, 1987 (52 FR 4924). Because the amendment, as submitted at that time, was determined to be inconsistent with the national standards of the Magnuson Act, it was withdrawn (52 FR 6357, March 3, 1987) for reconsideration by the Councils. The public was informed (52 FR 7463, March 11, 1987) that when the amendment is resubmitted to the Secretary for review the comment period will be 30 days.

Regulations proposed by the Council and based on this amendment are scheduled to be published within 15 days.

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

Dated: April 6, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–8038 Filed 4–9–87; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 69
Friday, April 10, 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

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of new system of records.

SUMMARY: The United States Department of Agriculture (USDA), in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), proposes to establish a new system of records: USDA/FS–49, Roster of Forestry and Natural Resources Expertise. This system of records is necessary for the USDA, Forest Service, International Forestry Staff, Forestry Support Program to identify and locate qualified experts for short-term and long-term international assignments with forestry or natural resources development projects of the USDA, Forest Service, the United States Agency for International Development, the United States Peace Corps, and other cooperating agencies and organizations.

DATES: Public comments must be received by May 11, 1987. This system shall take effect without further notice on June 9, 1987, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESS: Although the Privacy Act requires only that the portion of the system which describes the "routine uses" of that system be published for comment, USDA invites comments on all portions of this notice. Interested persons may submit written comments to: Mr. Patrick B. Durst, Forestry Support Program, International Forestry Staff, USDA Forest Service, P.O. Box 96090, Washington, DC 20013–6090. All comments submitted will be available for public inspection during business hours in Room 1208 at 1621 North Kent Street, Rosslyn Plaza East, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Patrick B. Durst, Special Projects Coordinator, Forestry Support Program, International Forestry Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20013–6090. Telephone: (703) 235–2432 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Under a Resources Support Services Agreement (#BST–5519–R–AG–2188) with the United States Agency for International Development, the USDA identifies technically qualified and culturally adaptable professionals in forestry and related natural resources to assist the U.S. Agency for International Development and cooperating agencies and organzations in implementing forest-based economic development projects in developing countries. Highly skilled and specialized experts are often required to provide advice and assistance regarding these projects. The purpose of this system of records is to provide the USDA, Forest Service, International Forestry Staff, Forestry Support Program with an efficient program of identifying and locating the needed experts who are interested and willing to accept short-term and long-term international forestry or natural resources assignments.

The new system will allow the USDA, Forest Service to maintain records on the availability, skills, education, language capabilities, experience, and other characteristics of potential advisers and contractors interested in international assignments. The system of records will help the Forest Service identify potentially qualified individuals for international assignments in a more fair and unbiased manner than would be possible without the system. All individuals interested in international forestry assignments will be accepted into the system, and screening for specific assignments will be conducted using "blind" computer searches that select potential advisers on the basis of their skills and abilities. The system of records will also contain the addresses and phone numbers where individuals can be contacted.

Dated: April 6, 1987.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

USDA/FS–49

SYSTEM NAME:

USDA/FS–49, Roster of Forestry and Natural Resources Expertise.

SYSTEM LOCATION:

The records in this system are maintained at the office of the USDA, Forest Service, International Forestry Staff, P.O. Box 96090, Washington, DC 20013–6090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system includes records of individuals from local, State and Federal agencies, the private sector, and the university community who are seeking international assignments in forestry or natural resources with the Forest Service, the United States Agency for International Development, the United States Peace Corps, or other cooperating agencies and organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of a summary of each applicant's qualifications, a resume or other documentation providing detailed information relative to education and/or experience, and related correspondence. The system will also contain the addresses and phone numbers where individuals can be contacted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302; 7 U.S.C. 1736; and 22 U.S.C. 2386–2388, 2392, 2513.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

(1) Information from this system of records is used by authorized agency officials to identify and locate qualified forestry and natural resources professionals for international assignments. Information is made available to agency contracting offices to determine if Federal employees with required qualifications are available for specific international assignments, or to initiate development of an acquisition and to facilitate competitive selection in the issuance of agency acquisitions. Referral of information is also made to authorized individuals of other Federal agencies or international organizations seeking technically qualified individuals in the fields of forestry and natural resources, and to current U.S. Agency

for International Development contractors seeking qualified professionals to perform authorized international forestry and natural resources tasks for United States Government agencies;

(2) Disclosure to the Department of Justice for use in litigation when USDA, or any component thereof; or any employee of USDA in his or her official capacity; or any employee of USDA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or the United States, where USDA determines the litigation is likely to affect USDA or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by USDA to be relevant and necessary to the litigation, provided, however, that in each case, USDA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(3) Disclosure in a proceeding before a court or adjudicative body before which USDA is authorized to appear, when USDA or any component thereof; or any employee of USDA in his or her official capacity; or any employee of USDA in his or her individual capacity where USDA has agreed to represent the employee; or the United States, where USDA determines that litigation is likely to affect USDA or any of its components, is a party to litigation or has an interest in such litigation and USDA determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, USDA determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

(4) Referral to the appropriate agency, where Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or particular program statute, or by rule, regulation, or order issued pursuant thereto;

(5) To answer congressional inquiries made at the request of the individual from whose record information is disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders at the agency address listed above; qualification summaries are maintained in an automated database for easy retrieval.

RETRIEVABILITY:

Paper records are indexed alphabetically and/or by identification number. Automated records may be retrieved by experience, education, language capability, employment status or other criteria required for the successful conduct of proposed assignments or acquisitions.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets and in secured computer rooms.

RETENTION AND DISPOSAL:

Until the National Archives and Records Administration determines an appropriate retention and disposal schedule for these records, they will be retained indefinitely in accordance with Forest Service Handbook 6209.11, Records Management Handbook.

SYSTEMS MANAGER AND ADDRESS:

Special Projects Coordinator, Forestry Support Program, International Forestry Staff, USDA Forest Service, P.O. Box 96090, Washington, DC 20013–6090.

NOTIFICATION PROCEDURE:

Individuals may request information regarding this system of records, or information as to whether the system contains records pertaining to them from the Special Projects Coordinator, Forestry Support Program (address above). A request for information should contain name, address, and particulars involved (for example, the date of action giving rise to the inquiry or complaint).

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should submit a written request to the Special Projects Coordinator, Forestry Support Program (address above). The envelope and letter should be marked "Privacy Act Request."

CONTESTING RECORD PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes from applicants for agency acquisition or Federal employees interested in international forestry or natural resources development assignments.

[FR Doc. 87–8076 Filed 4–9–87; 8:45 am]

BILLING CODE 3410–11–M

Commodity Credit Corporation

Uniform Grain and Rice Storage Agreement Fees; 1987–88 Contract Year

AGENCY: Commodity Credit Corporation.

ACTION: Notice of 1987–88 contract year application and inspection fees.

SUMMARY: The purpose of this notice is to publish a schedule of 1987–88 application and inspection fees to be paid to Commodity Credit Corporation (CCC) by grain and rice warehousemen requesting to enter into a storage agreement with CCC in accordance with the regulations governing the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed (7 CFR 1421.5551 *et seq.*). The fees are charged by CCC to defray the costs of contract application processing and warehouse inspections of warehouses operated by such warehousemen who do not have such an existing storage agreement.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Closson, Chief, Storage Contract Branch, Warehouse Division, ASCS, USDA, Room 5962—South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5647.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since implementation will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment.

Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required.

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

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

The Commodity Credit Corporation Charter Act (15 U.S.C. 714) provides authority for CCC to conduct a number of operations to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act requires that in carrying out purchasing and selling operations and in the warehousing, transporting, or handling of agricultural commodities, CCC use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangement of trade and commerce.

Pursuant to these provisions, CCC enters into storage agreements with private grain and rice warehousemen to provide for the storage of commodities owned by CCC or pledged as security to CCC for price support loans. CCC examines all grain and rice warehouses for which a warehouseman has requested approval of a new storage agreement to determine whether the warehouseman satisfies the standards of approval or has the ability to do so. Application procedures include review of an applicant's financial statement, establishment of net worth, verification of licensing requirements, and other contract administrative procedures.

The regulations found at 7 CFR 1421.5558 provide that all grain and rice warehousemen who do not have an existing agreement with CCC for storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral, but who desire such an agreement, must pay an application and inspection fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination.

A review of the funds generated from the fees collected under the United States Warehouse Act (USWA) indicates that they are sufficient to cover the costs associated with processing an application for a USWA license. Because the application process for a storage agreement is a separate process from the licensing process and requires essentially the same time, it was determined that the fee schedule for both UGSA applications and USWA should be similar. However, for those warehousemen having a USWA license and seeking a storage agreement or seeking both a USWA license and storage agreement some aspects of the application process are duplicative in nature. A reduced fee will be collected by CCC to offset contract administrative cost only from federally licensed warehousemen to reflect the lower costs incurred in the areas where duplicate requirements exist such as for warehouse examination and financial statement review.

Determination

The application and inspection fees set forth herein will be collected for the 1987–88 contract year by CCC from all warehousemen requesting to enter into a Uniform Grain Storage Agreement or Uniform Rice Storage Agreement who do not have such an existing agreement with CCC.

Application and Inspection Fees

The fee shall be computed at the rate of $10 for each 10,000 bushels of storage capacity or fraction thereof but the fee shall be not less than $100 nor more than $1,000; however, if the applicant is licensed under the United States Warehouse Act or is applying for such a license, the fee shall be computed at the rate of $2.50 per 10,000 bushels of storage capacity or fraction thereof but not less than $25 nor more than $250.

Before any original application is processed or inspection is made, the applicant shall deposit with CCC the amount of the fee prescribed. Such deposit shall be made in the form of a check, draft or post office or express money order payable to the order of "Commodity Credit Corporation."

Signed at Washington, DC, on April 6, 1987.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–8074 Filed 4–9–87; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket Nos. 6673–01, 6673–02, 6673–03]

Actions Affecting Export Privileges, Jeanette Wellems, Steuerungstechnik und Messgeraete, a/k/a S.M.G., a/k/a Stemege, JI&C Ltd.

In the matter of Jeanette Wellems, individually and doing business as Steuerungstechnik und Messgeraete, a/k/a S.M.G., a/k/a Stemege and doing business as JI&C Ltd., Respondents, Dockets Nos. 6673–01, 6673–02, and 6673–03.

Summary

The Recommended Decision and Order of the Administrative Law Judge is affirmed. Jeanette Wellems, individually and doing business as Steuerungstechnik und Messgeraete, a/k/a S.M.G., a/k/a Stemege, with an address at 4 Wohllebengasse 15, A–1041 Vienna, Austria is denied U.S. export privileges for 15 years from the date of this order. The charges against JI&C Ltd., 4 Wohllebengasse 15, A–1041 Vienna, Austria are dismissed.

Order

On March 5, 1987, the Administrative Law Judge entered an order in the above referenced matter. The order was referred to me pursuant to section 13(c) of the Export Administration Act of 1979, 50 U.S.C. App. 2401 through 2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) and 15 CFR 388.23 for final action. Having examined the record and based on the facts addressed in ths case, I affirm the order of the Adminstrative Law Judge.

This constitutes final agency action in this matter.

Dated: April 6, 1987.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

Summary of Decision and Order

In the matter of Jeanette Wellems, individually and doing business as Steuerungstechnik and Messgeraete, a/k/a S.M.G. a/k/a Stemege and doing business as JI&C Ltd., Respondents, Docket Nos. 6673–01, 6673–02, and 6673–03.

Appearance for Respondents: Dr. Ingo Gutjahr, Verteidiger in Strafsachen, 1080 Wien, Wickenburggasse 5, Austria.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th and Constitution Avenue, NW., Washington, DC 20230.

For JI&C Ltd., 4 Wohllebengasse 15, A-1041 Vienna, Austria, charges are dismissed. For the following parties, U.S. export privileges are denied for 15 years from the date that this Order is affirmed by the Assistant Secetary for trade Administration.

Decision

Jeanette Wellems, individually and doing business as Steuerungstechnik and Messgeraete, a/k/a S.M.G. a/k/a Stemege 4 Wohllebengasse 15, A-1041 Vienna, Austria.

Procedural Background

On June 19, 1986 the Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce (the "Agency"), issued a charging letter against Jeanette Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, and doing business as JI&C Ltd. This letter was issued under the authority of section 13(c) of the Export Administration Act of 1979 (50 U.S.C. app. 2401-2420 (1982), as reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985)) (the "Act"), and under the authority of Part 388 of the Export Administration Regulations (currently codified at 15 CFR Pats 368 through 399 (1986)) (the "Regulations"). The letter charged that Respondents had violated §§ 387.3 and 387.4 of the Regulations in the 1981-1982 export of U.S.-origin goods from the United States to Austria through the Federal Republic of Germany.

Respondent Wellems filed a July 24, 1986 answer to the charging letter. Neither Respondent nor Agency Counsel requested a hearing. Consequently, this matter is decided on the record without a hearing. Respondent Wellems and Agency Counsel made submissions for the record, which was closed for decision December 17, 1986.

Arguments of the Parties

Agency Counsel asserted that, from October 10, 1981 through March 25, 1982, Respondent Wellems conspired with three other individuals to acquire U.S.-origin goods, exported from the United States through the Federal Republic of Germany to Austria, without the required U.S. validated licenses and reexport authorizations, in violation of the Act and the Regulations. Pursuant to the alleged conspiracy, according to Agency Counsel, an application for a validated license, for an export of these U.S.-origin goods from the United States to the Federal Republic of Germany, misrepresented that the end use of the goods was to be in the Federal Republic of Germany, when in fact the intention was to reexport them from there to Respondent Steuerungstechnik und Messgeraete in Austria. Agency Counsel further asserted that, in February-March 1982, four shipments of U.S.-origin goods were made, pursuant to this conspiracy, from the United States to the Federal Republic of Germany and thence to Respondent Steuerungstechnik und Messgeraete in Austria, with no U.S. authorization for such reexport to Austria.

Respondent Wellems answered with three arguments. First, she contended that during 1981-82 she worked at S.M.G. only as a part-time secetary and accordingly "had no influence on the transactions [done by S.M.G.] and didnot [sic] now about them" (Respondent's July 24, 1986 Filing 2). Second, Respondent Wellems argued that she may not be sanctioned "for doing anything in Austria which is not forbidden by Austrian law" (*id.* last page; Respondent's October 10, 1986 filing). Third, as to JI&C Ltd., she claimed that it had "never ordered or received anything from " the other alleged co-conspirators, and also that she was "manager" of this firm only in 1984 (Respondent's July 24, 1986 filing, last page).

In reply, Agency Counsel agreed that documentation submitted by Respondent Wellems showed that she no longer does business as JI&C Ltd., and accordingly Agency Counsel did not oppose deletion of JI&C Ltd. as a Respondent in this proceeding. But Agency Counsel submitted its own documentation in support of its charge that Respondent Wellems herself actively participated in the alleged 1981-82 violations of the Regulations. As to Respondent Wellems' argument based on Austrian law, Agency Counsel contended that is is U.S. law that controls the instant proceeding.

Related Persons

Agency Counsel requested that JI&C Ltd. land one individual be named as related persons because of their relationships to Respondent Wellems (Agency Counsel's November 20, 1986 Submission 2 n.2). Section 388.3(c) of the Regulations provides that an order may be made applicable to a related person "after notice and opportunity for comment . . . ." The record does not reflect that either JI&C Ltd. or this individual has as yet been given such notice and opportunity for comment. (Although orders and filing served on Respondent Wellems in this proceeding have mentioned JI&C Ltd., it is her claim accepted by Agency Counsel, that she no longer does business as JI&C Ltd.)

Consequently, before either JI&C Ltd. or the individual may be named a related person, the record must show that such person has been afforded notice and opportunity for comment, as through a proceeding initiated by Agency Counsel under § 388.3(c). If, after such a proceeding, the record so warrants, such person will then be named a related person.

Findings

The record of the instant proceeding warrants the following findings. During the period from October 30, 1981 through March 24, 1982, Respondent Wellems conspired with three other individuals to bring about violations of the Act and the Regulations. Her active participation in the conspiracy alleged by Agency Counsel is amply demonstrated by the documentation submitted by Agency Counsel.[1]

Of the other three individuals involved in the conspiracy, one was another official of the Austrian company Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege. The second was a German-born resident of the United States, and the third was an official of an FRG company. The purpose of the conspiracy was for Respondent Wellems, Steuerungstechnik und Messgeraete, and the co-conspirator who was also an official of that company to acquire U.S.-origin goods in Austria without having obtained the validated export licenses and reexport authorizations required by the Regulations.

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[1] See, e.g., Agency Counsel's November 20, 1986 Submission, Exhibits 4-5, 7-9, 11-16, which are telexes showing Respondent Wellems' active role in the transactions at issue in this proceeding, the Exhibits 5-6, which suggest Respondent Wellems' participation in a meeting involved with these transactions. As to another aspect of this Submission, it may further be noted that it appears to contain the following typographical errors. On page 4, fourth last line of text, Exhibit 10 should apparently be excluded from the listing of telexes. On page 6, the second last line of text should apparently cite Exhibit 15, rather than Exhibit 16; and the following line of text should apparently cite Exhibit 18, rather than Exhibit 17. On page 8, the fourth line of text should apparently cite Exhibit 19, rather than Exhibit 18. On page 9, in the second line of the text paragraph that begins there, the license number should apparently be A599062, rather than A599062; and the same apparent typographical error occurs again three lines of text later.

To implement this conspiracy, Respondent Wellems and the other conspirators engaged in a series of overt acts. Respondent Wellems, Steuerungstechnik und Messgeraete, and the co-conspirator who was also an official of that company requested certain U.S.-origin goods from the U.S. resident co-conspirator. He exported them, in four separate shipments, to the company of the FRG conspirator in the Federal Republic of Germany, who then reexported them to Steuerungstechnik und Messgeraete in Austria. These four exports and reexports, which occurred in February and March of 1982, are identified in Schedule A of the June 19, 1986 charging letter; and this Schedule A is incorporated herein by this reference.

For the export from the United States to the Federal Republic of Germany, the conspirator who was a U.S. resident applied for a validated license, representing that the FRG co-conspirator's company was to be the ultimate consignee and that the Federal Republic of Germany was to be the country of ultimate destination. The involvement in the transaction of Respondent Wellems and Steuerungstechnik und Messgeraete and the co-conspirator also in that company was nowhere disclosed in the license application. Consequently, the application contained false and misleading statements of material fact.

Once the FRG conspirator received in the Federal Republic of Germany each of the four shipments from the United States, as noted above he reexported them to Austria to Steuerungstechnik und Messgeraete. For such reexport, a U.S. authorization was required; and none has been obtained. Respondent Wellems knew or had reason to know that these U.S.-origin goods had been acquired on behalf of her and Steuerungstechnik und Messgeraete and that they were to be shipped to Austria without the authorization required by the Regulations. Respondent Wellems does business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege.

As to JI&C Ltd., the record does not establish any participation by it in any of the October 1981–March 1982 activities described above. According to one of the documents filed by Respondent Wellems, the Articles of Incorporation for this company were not signed until October 20, 1982 (Respondent's October 20, 1986 submission). Further, the record does establish that Respondent Wellems has not been a "managing director" of the company since September 1984.

Conclusions

The record requires the following conclusions. For Respondent JI&C Ltd., the charges are dismissed. For Respondent Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, the conclusion is that she violated § 387.4 of the Regulations for each of the four shipments to Steuerungstechnik und Messgeraete in Austria without the required authorization, and that she violated § 387.3 for conspiring to bring about a violation of the Act and the Regulations.

Respondent Wellems' argument that her actions in Austria should be measured only by Austrian law is unpersuasive. Her participation, as described above, in the four shipments of U.S.-origins goods from the United States through the Federal Republic of Germany to Austria, and her participation described above in the conspiracy related to these shipments, may fairly be subjected to the provisions of the Act and the Regulations. Judged by the standards of these provisions, she violated § 387.3 and 387.4 of the Regulations; and nothing in the Act or the Regulations provides that her claimed compliance with Austria law would constitute a valid defense.

All five of Respondent Wellems' violations of the Regulations involved U.S.-origin commodities that are controlled under the Act for national security reasons, as alleged in the charging letter. For such violations, an order denying the U.S. export privileges of Respondent Jeanette Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, for 15 years from the date a final order becomes effective in this proceeding is appropriate.

Order

Accordingly, pursuant to the authority delegated to the undersigned by Part 388 of the Regulations, it is hereby ordered as follows:

1. All outstanding validated export licenses in which Respondent Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

2. For a period of 15 years from the date that this Order is affirmed, Respondent Jeanette Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, 4 Wohllebengasse 15, A–1041 Vienna, Austria, and the successors, assignees, officers, partners, representatives, agents, and employees of such Respondent are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data, in whole or in part, exported from the United States or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation, directly or indirectly, in any manner or capacity:

a. As a party or as a representative of a party to a validated export license application submitted to the Department;

b. In preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith;

c. In obtaining from the Department or using any validated or general export license or other export control document;

d. In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, that are exported or to be exported from the United States or that are otherwise subject to the Regulations; and

e. In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data that are subject to the Act and the Regulations.

3. Such denial of export privileges may, after notice and opportunity for comment, also be made applicable to any person, firm, corporation, or business organization with which Respondent Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

4. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data that are subject to such denial of export

privileges, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent Wellems, individually and doing business as Steuerungstechnik und Messgeraete, also known as S.M.G. and as Stemege, or whereby such Respondent may obtain any benefit therefrom or have any interest in or participation therein, directly or indirectly:

A. Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for such Respondent; or

b. Order, buy receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

5. In accordance with section 13(c) of the Act and § 388.16 of the Regulations, the foregoing constitutes the Decision and Order of the undersigned in this proceeding. The Order shall become effective if and when it is affirmed by the Assistant Secretary for Trade Administration, to whom the Secretary has delegated his responsibilities under section 13(c).

Dated: March 5, 1987.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 87-8023 Filed 4-9-87; 8:45 am]

BILLING CODE 3510-DT-M

[A-588-038]

Bicycle Speedometers From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 14, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers eighteen manufacturers and/or exporters of this merchandise to the United States and the period November 1, 1984 through October 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from one manufacturer. Based on our analysis of the comments received, the final results of review are changed from those presented in the preliminary results.

EFFECTIVE DATE: April 10, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background:

On November 18, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 41363) the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826, November 22, 1972). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of bicycle speedometers, currently classifiable under items 711.9300, 711.9820 and 732.4200 of the Tariff Schedules of the United States Annotated.

The review covers eighteen manufacturers and/or exporters of Japanese bicycle speedometers to the United States and the period November 1, 1984 through October 31, 1985.

Analysis of Comment Received

We gave interested parties the opportunity to comment on the preliminary results. Asahi Keiki Mfg. Co., a respondent, submitted written comments.

Comment 1: Asahi contends that the scope of the finding does not include bicycle or exercycle speedometer parts or attachments. Separate price comparisons of parts and attachments, such as the cable and gear unit, should not be made. If comparisons are to be made on components sold separately, then the prices of the cable and gear unit should be added to that of the head so that comparisons can be made directly with total units of bicycle speedometers sold in the home market.

Department's Position: We disagree. Bicycle and exercycle speedometers consist of three discrete elements: Head, gear unit, and cable. Asahi shipped the elements either packed in individual boxes or packed in bulk. Regardless of how packed, the speedometer contains three discrete elements that are put together by the customer at the time of installation on the bicycle. Indeed, we are not aware of any instance in which the three elements are assembled into a total speedometer prior to importation into the United States. Furthermore, the head, gear unit, and cable have no use other than to be joined together as a speedometer, and we have no evidence that a separate market exists for the individual elements. Further, a comparison of the records of the Treasury Department's original investigation in this case and the current review shows no evidence of any change by Asahi in either the shipping or pricing method since the original investigation. In both instances, Asahi shipped in both individual and bulk packing; the Treasury Department in its analysis made no distinction between these two types of shipments. In both instances, the company provided, and the Treasury Department used in its analysis, separate prices for each of the three separate speedometer elements. Based on this evidence we conclude that all three separate elements were included in the scope of the investigation.

In our analysis for this review we calculated the value of a total unassembled bicycle speedometer (head, gear unit, and cable) to the United States by adding the prices of the three elements when such elements were sold by the same manufacturer and shipped during the review period. We did not consider whether such elements were shipped together or separately. Where sale quantities of the various elements differed over the period of the review, we did not include in the review the excess elements that could not be matched with quantities of other elements to comprise total speedometers. We based foreign market value upon the price of a total home market unassembled speedometer.

Comment 2: Asahi contends that price comparisons were made on both sales by Asahi Keiki through N.S.I. and then again on N.S.I.'s resales to each of its U.S. customers.

Department's Position: Asahi listed in its response sales to three unrelated U.S. customers and sales through its U.S. subsidiary, N.S.I. Asahi now claims that the sales to the unrelated U.S. customers are the same sales as those from N.S.I. to the U.S. customers.

This is new information, untimely filed, that contradicts the original submission. It was not submitted in time to conduct verification. Additionally, this submission was made on the last day of the comment period, effectively precluding the petitioner from

responding. It will not be considered in this review.

Comment 3: Asahi contends that in making separate price comparisons between NSI's sales of speedometer heads sold to Allegheny International and Diversified Products Corporation, and speedometers sold in the home market, the Department erred in not making an adjustment to the home market price for differences in merchandise.

Department's Position: The Department did not make an adjustment to the sales from Asahi to Allegheny International and Diversified Products Corporation because the response indicated that it sold complete speedometer units to these firms. No other difference in merchandise adjustment was claimed.

Comment 4: The Department erred in the amount of the adjustment for differences in packing costs. The respondent contends that the difference in packing costs between sales in the home market and sales to the U.S. used in calculating a separate margin for NSI should have been the same as that used in price comparisons on NSI's sales to its U.S. customers.

Department's Position: The Department used the cost of U.S. packing that NSI reported in its response and compared that to the cost of packing in the home market. We added or subtracted the difference from the home market price.

Comment 5: The Department should publish separate cash deposit rates for bicycle and exercycle speedometers. It acknowledged a distinction between bicycle and exercycle speedometers when it announced a separate cash deposit rate for double gear hub exercycle speedometers in its April 30, 1984 notice (49 FR 18336) (SIC).

Department's Position: Exercycle speedometers and digital speedometers are both within the scope of the finding. There is no reason to publish separate rates for exercycle speedometers. The April 30, 1984 notice referred to was issued as a result of a court remand directing the Department to calculate a dumping margin for double-gear hubdrive speedometers, since it had not previously done so. The Department's subsequent final results of review notice for the 1980–81 period, makes no mention of separate rates for different products. (49 FR 24226).

Comment 6: Since the weighted average margin issued by the Department in its preliminary results notice on only bicycle speedometers sold by Asahi was 0.03 percent, the cash deposit for any new shipper of Asahi bicycle speedometers should be waived.

The rate for exercycle speedometers should be based solely on the rate determined for N.S.I., the sole importer of Asahi's exercycle speedometers.

Department's Position: The Department's preliminary notice included all items covered by the finding. The term "bicycle speedometers" has been clarified in previous notices and needs no in-depth definition with every publication. The weighted average margin and cash deposit rate for Asahi, regardless of type of speedometer exported is 17.74 percent, based on analysis of the direct exports it listed in its response.

The Department does not list separate cash deposit rates for different items included in the class or kind of merchandise subject to a finding.

Final Results of Review

Based on our analysis of the comments received, the final results of our review are the same as those presented in our preliminary results of review, and we determine that the following margins exist for the period November 1, 1984 through October 31, 1985:

Manufacturer/exporter	Margin (percent)
All New Firms	17.74
Asahi Keiki Mfg. Co	[1] 17.74
Asahi Keiki Mfg. Co Co., Ltd	[1] 17.74
Asahi Keiki Mfg. Co./Noma Enterprises Co., Ltd	[1] 17.74
Asahi Keiki Mfg. Co./Nippon Seiki Co., Ltd	[1] 17.74
Asahi Keiki Mfg. Co./ Royal Industries Ltd	[1] 17.74
Asahi Keiki Mfg. Co./Yagami Corporation	.03
Asahi Keiki Mfg. Co./N.S.I. International	4.95
Asahi Keiki Mfg. Co./Diversified Products Corporation	6.53
Asahi Keiki Mfg. Co./Allegheny International	17.74
Asahi Keiki Mfg. Co./Roadmaster Corporation	0
Tsuyama Mfg. Co., Ltd	.07
Tsuyama Mfg. Co./Kozaki Trading Co., Ltd	0
Tsuyama Mfg. Co./Yagami Corporation Co., Ltd	6.31
Tsuyama Mfg. Co./Kuwahara Co., Ltd	2.34
Tsuyama Mfg. Co./Asia Machinery Co., Ltd	0
Tsuyama Mfg. Co., Ltd./H. Tano & Co., Ltd	0
Tsuyama Mfg. Co., Ltd./Mitsui & Co., Ltd	17.74
Tsuyama Mfg. Co., Ltd./Shinwa Trading Co., Ltd	0
Fujimoto Trading Co	[1] 17.74

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to collect a cash deposit of estimated antidumping duties based upon the above margins. Since the margin for Tsuyama Mfg. Co., Ltd. and Asahi Keiki Mfg. Co./Yagami Corporation are less than 0.05 percent and therefore *de minimis* for cash deposit purposes, the Department waives the deposit requirement for these firms. For future shipments from the remaining manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the antidumping duty order (49 FR 24420 June 13, 1984) for each of those firms. For any entries from a new exporter not covered by this review, whose first shipments occurred after October 31, 1985 and who is unrelated to any reviewed firm, a cash deposit of 17.74 percent shall be required. These deposit requirements and waivers are effective for all shipments of Japanese bicycle speedometers entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next 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 3, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 87–8083 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–437–601]

Postponement of Final Antidumping Duty Determination; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Hungarian People's Republic

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On March 20, 1987, we received a request from the respondent in the antidumping duty investigation of tapered roller bearings from the Hungarian People's Republic (Hungary) that the final determination be postponed as provided for in section 735(a)(2)(A). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of tapered roller bearings from Hungary have been made at less than fair value until not later than May 4, 1987.

EFFECTIVE DATE: April 10, 1987.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Mary Jenkins, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3965 or (202) 377–1756.

SUPPLEMENTARY INFORMATION: On September 19, 1986, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of tapered roller bearings from Hungary are being, or are likely to be, sold at less than fair value (51 FR 33284). We issued our preliminary affirmative determination on February 2, 1987 (52 FR 3836, February 6, 1987). That notice stated that we would issue a final determination on or before April 20, 1987. On March 20, 1987, Magyar Gordulusopagy Muvek, the respondent, requested that we extend the period for the final determination until May 4, 1987, in accordance with section 735(a)(2)(A) of the Act. The respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than May 4, 1987.

This notice is published pursuant to section 735(d) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

April 3, 1987.

[FR Doc. 87–8084 Filed 4–9–87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-604]

Postponement of Final Antidumping Duty Determination; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from a respondent in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final determination as to whether sales of tapered roller bearings and parts thereof, finished or unfinished (tapered roller bearings), from Japan, have occurred at less than fair value until not later than August 10, 1987. We are also postponing our public hearing from May 19, 1987, until June 30, 1987.

EFFECTIVE DATE: April 10, 1987.

FOR FURTHER INFORMATION CONTACT: Marie Kissel (202–377–3798) or Mary S. Clapp (202–377–1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On September 19, 1986, we published a notice in the **Federal Register** (15 FR 33286) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether tapered roller bearings from Japan are being, or are likely to be, sold at less than fair value. On October 16, 1986, the International Trade Commission determined that there is a reasonable indication that imports of tapered roller bearings from Japan are materially injuring a U.S. industry (U.S. ITC Pub. No. 1899, October 1986). On March 27, 1987, we published a preliminary determination of sales at less than fair value with respect to this merchandise (52 FR 9905). The notice stated that if the investigation proceeded normally, we would make our final determination by June 8, 1987.

On March 31, 1987, NTN Toyo Bearing Co., Ltd., a respondent in this investigation, requested a postponement of the final determination until not later than the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. This respondent accounts for a majority of the exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determination until not later than August 10, 1987.

Public Comment

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:30 a.m. on June 30, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B–099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 23, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

April 3, 1987.

[FR Doc. 87–8085 Filed 4–9–87; 8:45 am]

BILLING CODE 3510-05-M

[A-485-602]

Postponement of Final Antidumping Duty Determination; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Socialist Republic of Romania

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On March 30, 1987, we received a request from the respondent in the antidumping duty investigation of tapered roller bearings from the Socialist Republic of Romania (Romania) that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of tapered roller bearings from Romania have been made at less than fair value until not later than May 4, 1987.

EFFECTIVE DATE: April 10, 1987.

FOR FURTHER INFORMATION CONTACT: John Brinkmann (202) 377–3965 or Mary Jenkins (202) 377–1756, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On September 19, 1986, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of tapered roller bearings from Romania are being, or are likely to be, sold at less than fair value (51 FR 33284). We issued our preliminary affirmative determination on February 2, 1987 (52 FR 3838, February 6, 1987). That notice stated that we would issue a final determination on or before April 20, 1987. On March 30, 1987, Technoimportexport, the respondent, requested that we extend the period for the final determination until May 4, 1987, in accordance with section 735(a)(2)(A) of the Act. The respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final determination until not later than May 4, 1987.

This notice is published pursuant to section 735(d) of the Act.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

April 6, 1987.

[FR Doc. 87–8086 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Emergency Striped Bass Research Study; Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 96–118).

DATE: The meeting will convene on Thursday, May 21, 1987, at 10:00 a.m., and will adjourn at approximately 3:00 p.m. The meeting is open to the public.

ADDRESS: Large Buffet Room, Department of the Interior Cafeteria, U.S. Department of the Interior Building, C Street between 18th and 19th Streets N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, Office of Resource Investigations, National Marine Fisheries Service, Washington, DC 20235; Telephone: (202) 673–5359.

Dated: March 6, 1987.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 87–8039 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fur Seals; Meeting

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

ACTION: Notice of meeting.

SUMMARY: This notice is to announce a meeting to discuss the status of North Pacific fur seal issues in preparation for international consultations on the same subject in early June. The consultations are for the purpose of sharing information with Canada, Japan, and the Soviet Union and exploring the possibility of entering into a new international agreement. The Interim Convention on Conservation of North Pacific Fur Seals expired in October 1984.

DATE: May 7, 1987, 2:00 p.m. to 4:00 p.m.

ADDRESS: National Marine Fisheries Service, Room 928, 1825 Connecticut Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christina Terpak-Malm, Office of International Fisheries (F/M31), National Marine Fisheries Service, Washington, DC 20235, (202) 673–5281.

Dated: April 7, 1987.

Carmen J. Blondin,

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

[FR Doc. 87–8066 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Levels for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

April 7, 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 3, 1987. For further information contact Ann Fields, 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) 566–8791. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

In November 1986, the Governments of the United States and India reached agreement establishing a new bilateral agreement relating to trade in cotton, wool, man-made fiber, silk blend and vegetable fiber textiles and textile products for the period January 1, 1987 through December 31, 1991. The new agreement establishes, among other things, specific limits for:

Categories 310/318, 313, 315, 335, 336/636, 337, 338/339/340, 341, 342, 347/348 and 363 and a group limit for Group II (Categories 300, 301, 311, 312, 314, 316, 317, 319, 320, 330–334, 345, 349–359, 360–362, 369, 600–605, 630–635, 637–659, 665–670 and 831–859). Further consultations were held in February 1987 establishing individual limits for Categories 396–S (only TSUSA number 336.2840), 640, 641 and 642, produced or manufactured in India and exported during the twelve-month period which begins on January 1,

1987 and extends through December 31, 1987 within Group II.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in India and exported during 1987, in excess of the designated restraint limits.

A description of 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 29, 1986 (51 FR 27068), 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.

Committee for the Implementation of Textile Agreements

April 7, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement of February 6, 1987 between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 13, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint levels:

Category group II	12-mo level of restraint[1]
300, 301, 311, 312, 314, 316, 317, 319, 320, 330–334, 345, 349–359, 360–362, 369, 600–605, 630–635, 637–659, 665–670, and 831–859.	145,000,000 sq yds equivalent.
310/318	6,000,000 sq yd.
313	19,500,000 sq yd.
315	8,000,000 sq yd.
335	173,954 doz.
336/636	430,500 doz.
337	85,631 doz.
338/339/340	1,211,191 doz.
341	2,650,845 doz. of which not more than 1,590,507 doz. shall be in shirts and blouses made from fabrics with two or more colors in the warp and/or the filling in TSUSA numbers 384.4608, 384.4610, and 384.4612.
342	399,000 doz.
347/348	275,268 doz.
363	20,000,000 nos.
369–S[2]	790,000 pds.
640	125,000 doz.
641	740,000 doz.
642	220,000 doz.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 369, only TSUSA number 366.2840.

In carrying out this directive, cotton, and man-made fiber textile products in the foregoing categories, with the exception of Categories 300, 301, 311, 312, 314, 316, 317, 319, 320, 360–362, 369, 600–605, 665–668, 669, 670 and 831–859, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986, shall be charged against the restraint limits established for such goods during those periods to the extent of any unfilled balances. In the event the limits established during those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The 1987 restraint limits are subject to adjustment in the future, as applicable, according to the provisions of the bilateral agreement of February 6, 1987, between the Governments of the United States and India which provide, in part, that: (1) Group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–8081 Filed 4–9–87; 8:45 am]

BILLING CODE 3510-DR-M

New Export Visa Arrangement for Certain Cotton Textile Products Produced or Manufactured in Nepal

April 3, 1987.

The Chairman of the Committee for the Implementation of Textile Agreement (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 15, 1987. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

Under terms of the Bilateral Cotton Textile Agreement of June 1, 1986, the Governments of the United States and Nepal have exchanged letters establishing a new export visa arrangement on July 28 and August 18, 1986.

Effective on April 15, 1987, commercial shipments of cotton textile products in Categories 300–369 exported on and after April 15, 1987 must be accompanied by a valid and correct visa described in the enclosed letter to the Commissioner of Customs. Merchandise imported for the personal use of the importer and not for resale, does not require a visa for entry and shall not be charged to restraints.

A list of the issuing authorities and a facsimile of the visa stamp are published as enclosures to the letter to the Commissioner of Customs.

Interested persons are advised to take all necessary steps to ensure that cotton textile products, produced or manufactured in Nepal and exported on and after April 15, 1987, which are to be entered or withdrawn from warehouse for consumption in the United States will meet the requirements set forth in this notice.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 3, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of June 1, 1986, between the Governments of the United States and Nepal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 15, 1987, entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton textiles and textile articles in Categories 300–369, including, if any, part categories or merged categories, except Categories 353 and 354, produced or manufactured in Nepal and exported on and after April 15, 1987 from Nepal for which the Government of Nepal has not issued an appropriate visa fully described below.

A visa must accompany each commercial shipment of the aforementioned textiles and textile articles. A circular stamped marking in blue ink will appear in the front of the original commercial invoice. The original visa shall not be stamped on the duplicate copies of the invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States of America. Duplicates of the invoice may not be used for this purpose.

The visa stamp shall include the standard nine digit visa number (serial number), beginning with one numerical digit for the last digit of the calendar year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO), and six digit numerical serial number identifying the shipment; e.g. 7NP123456.

The stamp shall also include the date the visa was issued, the signature of an official from the authorized issuing authority and the correct category(s), part category(s) or merged category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Tariff Schedules of the United States Annotated (TSUSA).

The visa must not be accepted and entry must not be permitted if the shipment does not have a visa, or if the visa number, date, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way.

If the quantity indicated on the visa is more than that of the shipment, you shall permit entry and if quotas are in force you shall charge the actual quantity in the shipment to the restraint level (and not the visa quantity).

If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted and a new visa or visa waiver shall be required.

If the visa is not acceptable then a new visa must be obtained from the Nepalese Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Nepalese Government and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of the visaed invoice for use in obtaining a new correct original visaed invoice or a visa waiver.

Merchandise imported for the personal use of the importer and not for resale will not require a visa and shall not be charged to restraints.

You are further directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption, or designated shipments of textiles and textile articles, produced or manufactured in Nepal, notwithstanding the designated shipment or shipments do not fulfill the aforementioned visa requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

A list of the issuing authorities and a facsimile of the visa stamp are enclosed with this letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

The actions taken with respect to the Government of Nepal and with respect to imports of cotton textiles and textile articles from Nepal have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Exemplar of the Signatures of the Officials Authorized to Issue and Sign the VISA Relating to the Export of Readymade Garments

1. Mr. Rajpati Saran Singe
2. Mr. Ananda Karki
3. Mr. Riddni Man Shrestha
4. Mr. Achyut Thapa
5. Mr. Kuldip Singh Rathaur

[FR Doc. 87-7802 Filed 4-9-87; 8:45 am]

BILLING CODE 3510-DR-M

Import Charges for Man-Made Fiber Headwear in Category 659-H, Produced or Manufactured in Taiwan

April 7, 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 8, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive published in the **Federal Register** on January 6, 1987 (52 FR 447) established import restraint limits for cotton, wool, man-made fiber, silk blend and other vegetable textiles

and textile products, including man-made fiber headwear in Category 659–H (only TSUSA numbers 703.0510, .0520, .0530, .0540, .0550, .0560, .1000, .1610, .1620, .1630, .1640 and .1650), produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

In consultations held May 21 and 22, 1985 between the Coordination Council for North American Affairs (CCNAA) and the American Institute in Taiwan (AIT), agreement was reached with regard to understated weight on entry documents in imports of man-made fiber headwear in Category 659–H during 1983 and 1984. As a result, the CCNAA and AIT agreed that 275,032 pounds would be charged to the 1987 limits for Category 659–H.

Accordingly, in the letter published below, the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to charge 275,032 pounds to the restraint limit established for Category 659–H for the period which began on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 7, 1987.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: To facilitate implementation of the U.S. textile and apparel program, I request that, effective on April 8, 1987, you charge 275, 032 pounds to the limit established in the directive of December 23, 1986 for man-made fiber headwear in Category 659–H [1], produced or manufactured in Taiwan and exported during the period which began on January 1, 1987 and extends through December 31, 1987. This charge is for goods imported during 1983 and 1984.

[1] In Category 659, only TSUSA numbers 703.0510, .0520, .0530, .0540, .0550, .0560, .1000, .1610, .1620, .1630, .1640 and .1650.

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.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–8082 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

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 13, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive dated July 1, 1986 (51 FR 23807) established limits for certain specified categories of cotton, wool and man-made fiber textile products within the aggregate, including Category 639, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended, between the Governments of the United States and Indonesia, carryforward is being applied to the restraint limit established for Category 639. The limit for Category 639 has been filled. This adjustment will reopen the category.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

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.

Committee for the Implementation of Textile Agreements

April 6, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of June 25, 1986 from the Chairman, Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987.

Effective on April 13, the directive of June 25, 1986 is hereby further amended to adjust the previously established restraint limit for Category 639 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended to a level of 467,142 dozen.[1] [2]

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(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–8020 Filed 4–9–87; 8:45 am]

BILLING CODE 3510–DR–M

Amendment to the Export Visa Requirement for Certain Man-Made Fiber Textiles and Textile Products from Indonesia

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

[1] The agreement provides, in part, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to reflect any imports exported after June 30, 1986.

Customs to be effective on April 13, 1987. For further information contact Pamela Smith, International Trade Specialist (202) 377–4212.

Background

A CITA directive dated February 1, 1980, as amended, was published in the **Federal Register** (45 FR 8084) which established an export visa arrangement for entry into the United States for consumption, or withdrawal from warehouse for consumption of certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia.

As a result of discussions held between representatives of the Governments of the United States and Indonesia, the U.S. Government has agreed, according to the terms of the notes exchanged on February 19th and March 23, 1987 and pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Agreement of August 21, 1981, as amended, to suspend the visa requirement for merchandise in Category 639 exported from Indonesia with visas issued after July 1, 1986 and until further notice. Pending resolution of a trade problem that has arisen concerning export visas issued by the Government of Indonesia, merchandise in Category 639 exported from Indonesia must be accompanied by a visa waiver obtained from the Embassy of Indonesia (2020 Massachusetts Avenue NW., Washington, DC 20036–202/775–5200), and authorized by an official of the Office of Textiles and Apparel, of the United States Department of Commerce. Merchandise in Category 639 entered under a visa waiver will be charged to the existing restraint limit.

Accordingly, in the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the directive which establishes the export visa arrangement under the bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 29754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 6, 1987.

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 February 1, 1980, as amended, by the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry into the United States of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Indonesia for which that government had not issued an appropriate export visa.

Effective on April 13, 1987 and until further notice, the directive of February 1, 1980, as amended, is hereby further amended to suspend the previously established export visa requirement for goods in Category 639 with visas issued after July 1, 1986 and until further notice. Instead, you are directed to prohibit entry of merchandise from Indonesia in Category 639 not accompanied by a visa waiver issued by the Embassy of Indonesia (2020 Massachusetts Avenue, NW., Washington, DC 20036—202/775–5200), and authorized by an official of the Office of Textiles and Apparel of the United States Department of Commerce.

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.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–8021 Filed 4–9–87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Committee on Integrated Long-Term Strategy; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Integrated Long-Term Strategy will meet in closed session on 30 April 1987 in the Old Executive Office Building, Washington, DC.

The mission of the Advisory Committee on Integrated Long-Term Strategy is to provide the Secretary of Defense and the Assistant to the President for National Security Affairs with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense and theater warfare, including conventional war. At this meeting the Committee will hold classified discussions of national security matters dealing with long term strategy and policy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended [U.S.C. App. II, (1982)], it has been determined that this Advisory Committee meeting concerns matters listed in 5 U.S.C. section 552(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 6, 1987.

[FR Doc. 87–8013 Filed 4–9–87; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportatoin Allowance Committee.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personel Per Diem Bulletin Number 139. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 139 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: April 1, 1987.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distributions of Civilian Per Diem Bulletins by mail ws discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 139 to the Heads of the Executive Departments and Establishments

Subject: Maximum per diem rates for official travel in Alaska, Hawaii, the Comonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government Civilian Employees.

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702 (a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 138 except for the cases identified by asterisk * which rates are effective on the date of this Bulletin unless othewise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Adak* [1]	$19
Anaktuvuk Pass	140
Anchorage*	125
Atqasuk	215
Barrow*	150
Bethel	124
Cold Bay	120
Coldfoot	122
College	105
Cordova*	118
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
Eielson AFB	105
Elmendorf*	125
Fairbanks	105
Ft. Richardson*	125
Ft. Wainwright	105
Homer*	115
Juneau	109
Katmai National Park	148
Kenai*	104
Ketchikan*	105
King Salmon [3]	134
Kodiak*	118
Kotzebue* [3]	136
Murphy Dome [3]	105
Noatak*	136
Nome*	129
Noorvik*	136
Petersburg	113
Point Hope	160
Point Lay	179
Prudhoe Bay	113
St. Paul Island	115
Sand Point	103
Shemya AFB [2]	30
Shungnak*	136
Sitka-Mt. Edgecombe*	110
Skagway	113
Spruce Cape*	118
St. Mary's	100
Tanana*	129
Valdez*	147
Wainwright	165
Wrangell	113
Yakutat	110
All other localities [3]	91
American Samoa	81
Guam M.I	93
Hawaii:	
Hawaii, Island of:	
Hilo	59
Other	84
Kauai, Island of:[4]	
12-20—3-31	127
4-1—12-19	91
Oahu	98
All Other Islands	84
Johnston Atoll [2]	23
Midway Islands [1]	13
Northern Mariana Islands:	
Rota	76
Saipan	92
Tinian	68
All Other Islands	20
Puerto Rico:	
Bayamon:	
12-16—5-15	134
5-16—12-15	107
Carolina:	
12-16—5-15	134
5-16—12-15	107
Fajardo (Including Luquillo):	
12-16—5-15	134
5-16—12-15	107
Ft. Buchanan (Incl GSA Service Center, Guaynabo):	
12-16—5-15	134
5-16—5-15	107
Roosevelt Roads:	
12-16—5-15	134
5-16—12-15	107
Sabana Seca:	
12-16—5-15	134
5-16—12-15	107
San Juan (Including San Juan Coast Guard Units):	
12-16—5-15	134
5-16—12-15	107
All Other Localities	107
Virgin Islands of U.S.:	
12-1—4-30	156
5-1—11-30	126
Wake Island [2]	20
All Other Localities	20

[1] (Effective 12-1-86) Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility; when quarters are obtained through Aleutian Contractors, a daily travel per diem allowance of $89 is prescribed to cover the cost of lodging, meals and incidential expenses.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] This rate is effective 17 February 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 6, 1987.

[FR Doc. 87-8014 Filed 4-9-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), annuncement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 20-23 April 1987.

Times of Meeting: 0800-1700 hours each day.

Place: HQ WESTCOM and HQ PACOM.

Agenda: The Army Science Board Ad Hoc Subgroup on Defense of the Aleutians will meet with the Commanding Generals of WESTCOM and PACOM to discuss Indications and Warning, Air Defense and other pertinent issues. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information 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. 87-8122 Filed 4-9-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84, 128A]

Invitation for Applications for a New Award Under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Severely Disabled Individuals for Fiscal Year 1987

Purpose: To provide grant support to a public or nonprofit rehabilitation facility, designated State unit, or other public or private agency or organization for a project of national scope to provide community-based supported employment services to individuals with severe handicaps.

Deadline for Transmittal of Applications: June 10, 1987.

Applications Available: April 17, 1987.

Available Funds: $200,000.

Estimated Average Size of Award: $200,000.

Estimated Number of Awards: 1.

Project Period: Not to exceed 36 months.

For Applications or Further Information Contact: Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., Room 3322 (Switzer Building, M/S–2312), Washington, DC 20202. Telephone: (202) 732–1349.

Program Authority: 29 U.S.C. 777a(d)(1).

Dated: April 6, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–8093 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.128A]

Invitation for Applications for a New Award Under the Program of Special Projects and Demonstrations for Providing Transitional Planning Services to Youths With Severe Handicaps for Fiscal Year 1987

Purpose: To provide grant support to a public agency in a predominantly rural western State to develop, expand, and disseminate model statewide transitional planning services for youths with severe handicaps.

Deadline for Transmittal of Applications: June 10, 1987.

Applications Available: April 17, 1987.

Available Funds: $150,000.

Estimated Average Size of Award: $150,000.

Estimated Number of Awards: 1.

Project Period: Not to exceed 36 months.

For Applications or Further Information Contact: Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3322—M/S 2312), Washington, DC 20202. Telephone: (202) 732–1349.

Program Authority: 29 U.S.C. 777a(e).

Dated: April 6, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–8090 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.128A]

Invitation for Applications for a New Award Under the Program of Special Projects and Demonstrations for Providing Transitional Planning Services to Youths With Severe Handicaps for Fiscal Year 1987

Purpose: To provide grant assistance to a public agency in a predominantly urban State in New England to support an existing model statewide transitional planning services program for youths with severe handicaps.

Deadline for Transmittal of Applications: June 10, 1987.

Applications Available: April 17, 1987.

Available Funds: $150.000.

Estimated Average Size of Award: $150,000.

Estimated Number of Awards: 1.

Project Period: Not to exceed 36 months.

For Applications or Further Information Contact: Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3322, M/S—2312), Washington, DC 20202. Telephone: (202) 732–1349.

Program Authority: 29 U.S.C. 777a(e).

Dated: April 6, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–8088 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.128A]

Invitation for Applications for a New Award Under the Program of Special Projects and Demonstrations for Providing Transitional Planning Services to Youths With Severe Handicaps for Fiscal Year 1987

Purpose: To provide grant support to a public agency or nonprofit private organization in a predominantly rural southwestern State to develop, expand, and disseminate model statewide transitional planning services for youths with severe handicaps.

Deadline for Transmittal of Applications: June 10, 1987.

Applications Available: April 17, 1987.

Available Funds: $150.000.

Estimated Average Size of Award: $150,000.

Estimated Number of Awards: 1.

Project Period: Not to exceed 36 months.

For Applications or Further Information Contact: Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3322, M/S—2312), Washington, DC 20202. Telephone: (202) 732–1349.

Program Authority: 29 U.S.C. 777a(e).

Dated: April 6, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–8089 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Indian Education; Partially Closed Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 28, 1987, 8:30 a.m. until conclusion of business, approximately 9:00 a.m. (Closed, if necessary)

April 28, 1987, approximately 9:00 a.m. until conclusion of business (Open)

April 29, 1987, 9:00 a.m. until conclusion of business (Open).

ADDRESS: Red Lion Inn-Coliseum, 1225 N. Thunderbird Way, Portland, OR 97227 (503/235–8311)

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street NW., Suite 574, Washington, DC 20036 (202/634–6160)

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92–318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

On April 28, 1987, the closed portion (if necessary) of the meeting will start at approximately 8:30 a.m., and will end at the conclusion of business, approximately 9:00 a.m. The agenda will consist of discussion of an investigatory record which is confidential.

On April 28–29, 1987, starting at approximately 9:00 a.m. (on April 28, 1987), the meeting will be open to the public. The proposed agenda includes:

(1) Chairman's Report.
(2) Executive Director's Report.
(3) Action on previous minutes.
(4) Election of Officers.
(5) Committee discussions and reports.
(6) NACIE Budget—FY '87.
(7) Plans for future NACIE activities.
(8) Regular Council business.
(9) Public Testimony.
(10) On-site visits (April 29, 1987).

The closed portion of the meeting will touch upon investigatory records and matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemption (6) and (7) of section 552b(c) of Title 5 U.S.C.

A summary of the activities of the partially closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: April 2, 1987. Signed at Washington, DC.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 87–8101 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Guaranteed Student Loan Program, SLS Program, Plus Program, and Consolidation Loan Program

AGENCY: Department of Education.

ACTION: Notice of special allowance for quarter ending December 31, 1986.

The Assistant Secretary for Postsecondary Education announces a special allowance to holders of eligible loans made under the Guaranteed Student Loan Program (GSLP), the Supplemental Loans for Students (SLS) Program, the PLUS Program or the Consolidation Loan Program. This special allowance is provided for under section 438 of the Higher Education Act of 1965 (the Act), as amended (20 U.S.C. 1087–1).

Pursuant to the requirements of section 252 of Pub. L. 99–177, Balanced Budget and Emergency Deficit Control Act of 1985 (popularly known as the Gramm-Rudman-Hollings Act), the President issued a sequestration order on February 4, 1986, directing implementation of the reductions contained in the law. Congress ratified and affirmed the order as law (Pub. L. 99–366; July 31, 1986). Section 256 of Pub. L. 99–177 provides that if a sequestration order is issued, the special allowance formula for loans after the order takes effect and before the end of the fiscal year is adjusted by reducing the rate provided in section 438(b)(2)(A)(iii) of the Higher Education Act by 0.4 percent. The reduction will apply to the first four special allowance payments on loans made on or after March 1, 1986, and before October 1, 1986. Except for loans subject to section 438(b)(2)(B) of the Act, 20 U.S.C. 1087–1(b)(2)(B), for the quarter ending December 31, 1986, the special allowance will be paid at the following rates:

	Applicable interest rate (percent)	Annual special allowance rate (percent)	Special allowance rate % for quarter ending December 31, 1986
I. GSLP, PLUS or Consolidation loans made prior to October 1, 1981:			
	7	2.125	0.53125
	9	0.125	0.03125
II. GSLP, SLS or PLUS loans made on or after October 1, 1981 for periods of enrollment beginning prior to November 16, 1987; Consolidation loans made on or after October 1, 1981, but prior to October 17, 1986:			
A. Loans *not* subject to sequester order (Pub. L. 99–177)	7	2.01	0.5025
	8	1.01	0.2525
	9	0.01	0.0025
	12	0.00	0.00
	14	0.00	0.00
B. Loans subject to sequester order (Pub. L. 99–177)	7	1.61	0.4025
	8	0.61	0.1525
	9	0.00	0.00
	12	0.00	0.00
III. GSLP loans for periods of enrollment beginning on or after November 16, 1986; SLS or PLUS loans for periods of enrollment beginning on or after November 16, 1986, but before July 1, 1987; Consolidation loans made on or after October 17, 1986:			
	7	1.76	0.44
	8	0.76	0.19
	9	0.00	0.00
	10	0.00	0.00
	11	0.00	0.00
	12	0.00	0.00
	13	0.00	0.00
	14	0.00	0.00

The Assistant Secretary determines the special allowance rate in the manner specified in the Act, for loans at each applicable interest rate, by making the following four calculations:

(a) Step 1.

Determine the average bond equivalent rate of the 91-day Treasury bills auctioned during the quarter for which this notice applies (5.51 percent for the quarter ending December 31, 1986);

(b) Step 2.

Subtract from that average the applicable interest rate of loans for which a holder is requesting payment;

(c) Step 3.

(1) Add 3.5 percent to the remainder, and, in the case of loans made before

October 1, 1981, round the sum upward to the nearest one-eighth of one percent; or

(2) Add 3.1 percent to the remainder, in the case of loans subject to the sequester order issued pursuant to Pub. L. 99–177; or

(3) Add 3.25 percent in the case of (i) GSLP loans for periods of enrollment beginning on or after November 16, 1986, (ii) SLS or PLUS loans for periods of enrollment beginning on or after November 16, 1986, but before July 1, 1987, or (iii) Consolidation loans made on or after October 17, 1986; and

(d) Step 4.

Divide the resulting percent in Step 3 (either (c)(1), (c)(2), or (c)(3), as applicable) by four.

FOR FURTHER INFORMATION CONTACT: Ralph B. Madden, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education on (202) 245–2475.

(Catalog of Federal Domestic Assistance No. 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: April 7, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–8094 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Innovative Control Technology Advisory Panel; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), I hereby certify that establishment of the Innovative Control Technology Advisory Panel (ICTAP) is necessary and in the public interest in connection with the performance of duties imposed on the Department of Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR Subpart 101–6.10.

The purpose of the Panel is to provide the Secretary of Energy, through the Under Secretary, with advice and recommendations on activities related to the development of innovative technologies to control emissions associated with acid deposition.

Further information regarding this Advisory Committee may be obtained from Gloria Decker (202–586–8990).

Issued in Washington, DC, on April 7, 1987.

Charles R. Tierney,

Advisory Committee Management Officer.

[FR Doc. 87–8095 Filed 4–9–87; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

[BPA File No. DSC–6(c)]

Proposed Implementation of a Conservation Program Designed To Modernize Aluminum Smelters in the Pacific Northwest

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of decision.

SUMMARY: On February 23, 1987, BPA issued a Record of Decision with respect to the proposed implementation of a conservation program designed to modernize aluminum smelters in the Pacific Northwest.

The decision finds that the proposed program is consistent with the 1986 Northwest Conservation and Electric Power Plan (Plan) developed by the Northwest Power Planning Council (Council). The Council found the proposed program consistent with the Plan on March 18, 1987. This notice is made pursuant to 16 U.S.C. 839d(c)(4).

For further information, contact Donna L. Geiger, BPA Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212. Telephone numbers, Voice/TTY, for the Public Involvement Office are (503) 230–3478 in Portland; toll free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Wyoming, Utah, Nevada and California.

Issued in Portland, Oregon, on April 1, 1987.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 87–17963 Filed 4–9–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2613–003, et al.]

Hydroelectric Applications (Milstar Manufacturing Corp., et al.); Applications Filed

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: Transfer of License.

b. Project No.: P–2613–003.

c. Date Filed: February 13, 1987.

d. Applicants: Milstar Manufacturing Corporation, Central Maine Power Company, Scott Paper Company, Madison Paper Industries, Augusta Development Corporation, and The Merimil Limited Partnership.

e. Name of Project: Moxie Storage.

f. Location: On the Moxie Stream in Somerset County, Maine.

g. Filed Pursuant to: Section 9 of the Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David T. Flanagan, Vice President, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. Comment Date: May 18, 1987.

j. Description of Transfer: On June 11, 1969, a major license was issued to the Kennebec River Pulp & Paper Company (Kennebec), the Central Maine Power Company (CMP), the Scott Paper Company (Scott), the Milstar Manufacturing Corporation (Milstar), and the Bates Manufacturing Company, Inc. to construct, operate, and maintain the Moxie Storage Project No. 2613. On June 14, 1978, the Commission approved a transfer of license from the Kennebec Augusta Development Corporation (ADC), Scott and Milstar to Madison Paper Corporation, ADC, CMP, Scott and Milstar. Milstar is currently in the process of liquidating and will in the near future cease to exist, therefore, the transfer of Milstar's interest in the license to the Merimil Limited Partnership is necessary.

k. This notice also consists of the following standard paragraphs: B & C.

2 a. Type of Application: Transfer of License.

b. Project No.: 3195–020.

c. Date Filed: February 12, 1987.

d. Applicant: Joseph M. Keating and Sayles Hydro Associates.

e. Name of Project: Sayles Flat Hydroelectric Project.

f. Location: On the South Fork American River, near Twin Bridges, in El Dorado County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Edwin F. Feo, Esq., Lillick, McHose & Charles, 725 South Figueroa Street, Suite 1200, Los Angeles, CA 90017–2513, (213) 488–7100.

Louis Rosenman, Esq., LeBoeuf, Lamb, Leiby & MacRae, 1333 New Hampshire Ave. NW., Suite 1100, Washington, DC 20036, (202) 457–7500.

i. Comment Date: May 13, 1987.

j. Proposed Action: Joseph M. Keating proposes to transfer his license for Project No. 3195 to Sayles Hydro

Associates to facilitate completion of the project. Transferee has proposed to construct, operate, and utilize the full output of the project in accordance with the license.

Sayles Hydro Associates is a general partnership organized under the laws of the State of California.

k. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Conduit Exemption.

b. Project No.: 10309–000.

c. Date Filed: February 2, 1987.

d. Applicant: Ronald K. Vaughn.

e. Name of Project: Flying W.

f. Location: On an irrigation pipe in T20N, R9E, near Emmett in Valley County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. Richard K. Linville, P.O. Box 578, Emmett, ID 83617, (208) 365–3525.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed project would use an existing irrigation conduit and would consist of a powerhouse containing one generating unit with a rated capacity of 7.5 kW. The average annual energy production would be 43,800 kWh.

k. Purpose of Project: Project power would be used at the Flying W Lodge.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

4 a. Type of Application: Exemption (5 MW).

b. Project No.: 8682–002

c. Date Filed: January 27, 1987.

d. Applicant: City of Colonial Heights, Virginia.

e. Name of Project: Lakeview Dam Hydroelectric Project.

f. Location: On Swift Creek in the City of Colonial Heights, Chesterfield County, Virginia.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 313, Annapolis, MD 21403, (301) 268–8820.

i. Comment Date: May 13, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing hollow slab and buttress type dam 418 feet long with a maximum height of 38.6 feet; (2) an existing reservoir with a normal surface area of 38 acres and a storage capacity of 610 acre-feet; (3) two existing reinforced concrete conduits 8 feet high and 10 feet wide; (4) a proposed reinforced concrete powerhouse 40 feet long, 25 feet wide, and 30 feet high housing two 200–kW hydropower units; (5) a proposed tailrace; (6) a proposed 13.2–kV transmission line approximately 600 feet long; and (7) appurtenant facilities. The applicant estimates that the average annual energy generation would be 1.7 GWh. The dam is owned by the City of Colonial Heights, Virginia.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 10227–000.

c. Date Filed: January 2, 1987.

d. Applicant: City of Manassas, Virginia.

e. Name of Project: Summersville Dam.

f. Location: On the Gauley River near Summersville, Nicholas County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Marcos A. Alegre, Harwood Beebe Company, Inc., 364 South Pine Street, P.O. Box 2646, Spartansburg, SC 29304, (803) 585–0185.

i. Comment Date: May 15, 1987.

j. Competing Application: Project No. 10226–000; Date Filed: 1/2/87; Due Date: April 3, 1987.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Summersville Dam and reservoir and would consist of: (1) A proposed concrete-lined power tunnel 20 feet in diameter and 200 feet long branching into three penstocks; (2) a proposed reinforced concrete powerhouse housing two 40,000–kW and one 20,000–kW hydropower units; (3) a proposed tailrace; (4) a proposed transmission line connecting with a 345–kV Appalachian Power Company line or a 138–kV Monogahela Power Company line; and (5) appurtenant facilities. The applicant estimates that the average annual energy generation would be 255 GWh and that the cost of the work to be performed under the permit would be $280,000. The applicant proposes to sell most of the energy to a public or private utility, to utilize the energy within the utility systems of the Municipal Electric Power Association of Virginia, and to utilize the energy for the requirements of the City of Manassas.

1. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

6 a. Type of Application: Major License (over 5 MW).

b. Project No.: 9754–000

c. Date Filed: December 30, 1985.

d. Applicant: Rio Hydroelectric Associates.

e. Name of Project: Rio Hydroelectric Project.

f. Location: On the Mongaup River in Sullivan and Orange Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John N. Webster, Rio Hydroelectric Associates, c/o So. N.H. Hydroelectric Dev. Corp., P.O. Box 1073, Dover, NH 03820, (207) 384–5334.

i. Comment Date: May 18, 1987.

j. Description of Project: The proposed project would consist of existing project facilities currently owned by Orange and Rockland Utilities, Inc., including: (1) The Rio Dam, a composite structure comprised of an eastern earthen embankment 450 feet long, a center concrete gravity dam-spillway section 265 feet long and 101 feet high flanked on both sides by 100-foot long concrete abutments, and a western earthern embankment, 550 feet long; (2) trashracks and an intake structure; (3) Rio Reservoir, an impoundment with a surface area of 370 acres and a storage capacity of 13,110 acre-feet at spillway crest elevation of 810 feet mean sea level; (4) an 11-foot diameter collapsed 7100-foot long wood stave penstock attached to a 400-foot long steel penstock section; (5) a powerhouse with a total installed rated capacity of 11 MW; (6) a 300-foot long tailrace; (7) a 69 kV transmission line, 1100 feet long; and new project facilities to include: (8) a 7100-foot long steel or fiberglass penstock to replace the wood stave penstock; (9) a 3.5-foot diameter minimum-flow penstock, 65 feet long; (10) a powerhouse to use minimum flows with an installed capacity of 500 kW; (11) a 500-foot long tailrace; and (12) other appurtenances. The average annual energy generation is 31,000,000 kWh.

k. Purpose of Project: Project energy would be sold to Orange and Rockland Utilities, Inc.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

7 a. Type of Application: Preliminary Permit.

b. project No.: 10208–000.

c. Date Filed: December 22, 1986.

d. Applicant: Enterprise Power Inc.

e. Name of Project: Enterprise Hydroelectric.

f. Location: On the Enterprise Canal shiphon at the Teton River crossing in Fremont County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. Contact Person: Mr. G.L. Smith, P.O. Box 1016, Idaho Falls, ID 83402, (208) 529–8115.

i. Comment Date: May 18, 1987.

j. Description of Project: The proposed project would utilize excess flows in the Enterprise Canal, using existing works including: (1) A 300-foot-long diversion structure in the Falls River; (2) a 10-foot by 28-foot gated intake structure; (3) an 8-mile-long irrigation canal; and (4) a 60-inch-diameter steel siphon; and would consist of: (1) A penstock connecting to the siphon; (2) a powershouse containing a generating unit rated at 1,200 kW, producing an average annual output of 5.5 Gwh; (3) a tailrace discharging into the Teton River; and (4) an intertie to the electric distribution lines at the site. The estimated cost of permit activities is $20,000.

k. Purpose of Project: Generated 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.

8 a. Type of Application: Preliminary Permit.

b. project No.: 10210–000.

c. Date Filed: December 30, 1986.

d. Applicant: Skykomish River Hydro.

e. Name of Project: Harlan Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Harlan Creek, King County, Washington. Township 26N and Range 12E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,600 feet msl; (2) a penstock 12,000 feet long and 24 inches in diameter leading to; (3) a powerhouse at elevation 1,200 feet msl containing a single turbine/generator unit with a capacity of 2,330 kW operating at 1,400 feet of hydraulic head; and (4) a 4-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 10.2 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant proposes to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. project No.: 10212–000.

c. Date Filed: December 30, 1986.

d. Applicant: Skykomish River Hydro.

e. Name of Project: Martin Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Martin Creek, King County, Washington. Township 26N and Range 12E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmond, WA 98052, (202) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed project would consist of: (1) Two diversion structures with inlet elevations of 2,800 feet msl; (2) a bifurcated penstock 12,000 feet long and 60 inches in diameter leading to; (3) a powerplant at elevation 1,400 feet msl containing a single turbine/generator unit with a capacity of 7,642 kW operating at 1,400 feet of hydraulic head; and (4) a 0.3-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 33.5 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant proposes to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs; A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10274–000.

c. Date Filed: January 28, 1987.

d. Applicant: Cascade River Hydro.

e. Name of Project: Sibley Creek.

f. Location: On Sibley Creek within the Snoqualmie-Mt. Baker National Forest in T35N, R12E, near Marblemount in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey 12122–196th Avenue NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete ditch intake structure buried in the stream at elevation 2,600 feet; (2) a 6,000-foot-long, 24-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 2,980 kW; and (4) a 7-mile-long transmission line. Applicant estimates the average annual energy production to be 13.08 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 10305–000.

c. Date Filed: January 30, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Hidden Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Hidden Creek, Whatcom County, Washington. Township 37N and Range 9E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey 12122–196th NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 3,000 feet msl; (2) a penstock 6,000 feet long and 24 inches in diameter leading to; (3) a powerplant at elevation 800 feet msl containing a single turbine/generator unit with a capacity of 4,805 kW operating at 2,200 feet of hydraulic head; and (4) a 10-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 21.04 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant intends to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 10308–000.

c. Date Filed: January 30, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Park Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Park Creek, Whatcom County, Washington. Township 37N and Range 8E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey 12122–196th NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: May 15, 1987.

j. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,000 feet msl; (2) a penstock 7,000 feet long and 24 inches in diameter leading to; (3) a powerplant at elevation 1,000 feet msl containing a single turbine/generator

unit with a capacity of 2,124 kW operating at 1,000 feet of hydraulic head; and (4) a 7-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 9.3 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant intends to sell the power generated at the proposed facility.

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.

A5. Preliminary Permit

Anyone desiring to file a competing application 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 file in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) 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 requried 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.

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 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 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 7, 1987.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-8008 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI83-10-001, CI83-11-001 and CI87-188-000]

FMP Operating Co., a Limited Partnership; Applications for Permanent Abandonment and Blanket Limited-Term Certificate

April 6, 1987.

Take notice that the Applicant listed herein has filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service and for a blanket limited-term certificate to sell natural gas in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protests with reference to said applications should on or before April 13, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file petitions to intervene in accordance with the Commission's rules.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI83-10-001, B, Dec. 19, 1986 [1].	FMP Operating Company, a Limited Partnership, P.O. Box 60004, New Orleans, Louisiana 70160-0004.	Florida Gas Transmission Company, Matagorda Island Blocks 527 and 555, Offshore Texas.	([2]).....	
CI83-11-001, B, Dec. 19, 1986 [1].	.....	.....	([2]).....	
CI87-188-000, A, Dec. 19, 1986 [1].	.....	Various Purchases, Matagorda Island Blocks 527 and 555, Offshore Texas.	([3]).....	

[1] These applications were noticed on January 13, 1987. However, that notice did not include Applicant's additional request received February 19, 1987, to grant Applicant permanent abandonment in lieu of the limited-term abandonment previously requested. Such request was made in response to Florida Gas Transmission's protest to the original applications.

[2] Applicant requests permanent abandonment of gas sales to Florida Gas Transmission Company. The contract has terminated effective December 7, 1986, and buyer has ceased taking the gas. Applicant's well(s) produce NGPA section 102(d) gas and Applicant's deliverability is 38 MMcf/day.

[3] Applicant requests a blanket limited-term certificate with pregranted abandonment for a term to expire on September 1, 1989, in order to make spot-market sales for resale in interstate commerce of gas subject to the abandonment in Docket Nos. CI83-10-001 and CI83-11-001. Applicant requests that the filing requirements of Parts 154 and 271 of the Commission's Regulations be waived and in lieu thereof, Applicant is willing to accept reporting requirements.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-8049 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-357-000]

Newmont Oil Co; Application for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificate of Public Convenience and Necessity With Pre-Granted Abandonments

April 7, 1987.

Take notice that on March 10, 1987, Newmont Oil Company (Newmont), 600 Jefferson, 9th Floor, Houston, Texas 77002, filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), the provisions of 18 CFR Parts 154 and 157, and 18 CFR 2.77(a)(1), seeking (i) a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of certain natural gas, with pre-granted abandonment and (ii) a blanket limited-term abandonment, all for a term from April 1, 1987 through March 31, 1990, as more fully described in the Application which is on file with the Commission and open for public inspection.

Newmont states that the authority as requested is consistent with the Commission's rules and regulations and is necessary for Newmont to make short-term, best efforts and spot gas sales. Further, Newmont states that, absent such authorization, the flexibility and efficiency necessary for successful operation in the spot market would be hindered, and gas would be shut-in or significantly excluded from the market-place.

Specifically, Newmont requests that the Commission authorize Newmont:

(i) To make sales for resale in interstate commerce for a period of three years, with pre-granted abandonment of any such sale, without supply or market limitations, of gas subject to the Commission's NGA jurisdiction that is produced from various interests owned by Newmont;

(ii) To abandon for a three-year term sales for resale of gas subject to the Commission's NGA jurisdiction and previously certificated by the Commission, to the extent that such gas is released from contract by interstate pipelines for resale to third parties; and

(iii) A waiver of Part 154 of the Commission's Regulations concerning the establishment of rate schedules for any sales made under (i).

Certain sales proposed to be made by Newmont will not involve a dedication of reserves but will be based on periodic nominations, either by purchasers or by Newmont. The sales volumes, prices, purchasers, delivery points, and supply source will vary. Newmont proposes to sell and deliver to various short-term and spot gas purchasers all or a portion of the gas Newmont determines is available for sale at terms acceptable to Newmont for a particular time frame. Newmont will not be obligated to sell gas pursuant to any nomination or proposed nomination until the exact volumes, terms and conditions, and prices are agreed to by Newmont and a purchaser. The actual contract between Newmont and the short-term and spot gas purchaser may be for all or any portion of the quantity which was set out in the nomination or proposed nomination. Further, Newmont proposes to make sales on a best efforts basis where the price and term are agreed upon but there is no requirement on the purchaser or Newmont to sell a specific volume.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000.

Any person desiring to be heard or to make any protest with reference to said application should, on or before April 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-8050 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-385-000]

Phillips 66 Natural Gas Co.; Application

April 7, 1987.

Take notice that on March 23, 1987, Phillips 66 Natural Gas Company (Phillips 66 NGC), of 990-G Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 of the Commission's Regulations, to grant authorization for (1) blanket limited-term abandonment of sales for resale of all gas owned by Phillips 66 NGC and subject to Natural Gas Act jurisdiction; (2) blanket limited-term certificate to make sales for resale of such gas; (3) pregranted abandonment of any sales to alternate purchasers; and (4) waiver of requirements for filing and maintaining rate schedules during the limited-term abandonment.[1]

Any person desiring to be heard or to make any protest with reference to said application should on or before April 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-8051 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-384-000]

Phillips Petroleum Co.; Application

April 7, 1987.

Take notice that on March 23, 1987, Phillips Petroleum Company (Phillips), of 990-G Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 of the Commission's Regulations, to grant authorization for (1) blanket limited-term abandonment of sales for resale of all gas owned by Phillips and its co-owners which is priced at or below the NGPA section 109 maximum lawful price and subject to

[1] The above requests are similar to those authorized by the Commission's recent orders in *Southern Natural Gas Company* Docket No. CI86-371-000, 36 FERC par. 61,401 (September 29, 1986); *Sonat Exploration Company*, Docket No. CI86-403-000, 37 FERC par. 61353 (December 29, 1986); and *ANR Pipeline Company, et al.*, Docket No. CI86-637-000, *et al.*, 38 FERC par. 61,046 (January 21, 1987).

Natural Gas Act jurisdiction; (2) blanket limited-term certificate to make sales for resale of such gas; (3) pregranted abandonment of any sales to alternate purchasers; and (4) waiver of requirements for filing and maintaining rate schedules during the limited-term abandonment.[1]

Any person desiring to be heard or to make any protest with reference to said application should on or before April 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell

Acting Secretary.

[FR Doc. 87-8052 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-399-000]

Union Oil Co. of California, and Union Exploration Partners, Ltd.; Application

April 7, 1987.

Take notice that on March 27, 1987, Union Oil Company of California (Union) and Union Exploration Partners, Ltd. (UXP), of 1201 West 5th Street, Suite 902, Los Angeles, California 90017, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c and 717f, and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Part 157, to extend and amend its Order Permitting and Approving Limited-Term Abandonments and Granting Blanket Sales Certificates with Pregranted Abandonment issued in *Marathon Oil Company*, Docket Nos. CI85-651-001, *et al.* Approval of this Application will allow the UNIMART marketing program to be continued for an additional three-year period, or through March 31, 1990, and will permit Union and UXP to include all NGPA categories of natural gas for sale in UNIMART.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 21, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-8053 Filed 4-9-87; 8:45 am]

BILLING CODE 6717-01-M

[1] The above requests are similar to those authorized by the Commission's recent orders in *Southern Natural Gas Company* Docket No. CI86-371-000, 36 FERC par. 61,401 (September 29, 1986); *Sonat Exploration Company* Docket No. CI86-403-000, 37 FERC par. 61353 (December 29, 1986); and *ANR Pipeline Company, et al.* Docket No. CI86-637-000, *et al.*, 38 FERC par. 61,046 (January 21, 1987).

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice explaining procedures for processing refund applications in crude oil refund proceedings under 10 CFR Part 205, Subpart V.

SUMMARY: This notice considers the comments received by the Office of Hearings and Appeals (OHA) in response to its August 8, 1986 order implementing the Department of Energy's modified policy for restitution of crude oil overcharges, notice of which was published in 51 FR 29689 (August 20, 1986). DOE's new policy was issued in connection with the settlement of the DOE Stripper Well Exemption Litigation, MDL No. 378 (D. Kan.). The policy specifies that 20 percent of crude oil overcharges will be set aside to satisfy refund claims and 80 percent will be disbursed to the state and federal governments for indirect restitution. This notice analyzes the comments and explains the procedures which the OHA will follow in processing applications filed under the DOE's Subpart V regulations for refunds of the crude oil overcharge funds.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); (202) 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: As part of the settlement approved in the Department of Energy Stripper Well Exemption Litigation, MDL No. 378 (D. Kan.), the DOE agreed to revise its restitutionary policy for crude oil overcharge cases. Accordingly, the DOE issued a Statement of Modified Restitutionary Policy in Crude Oil Cases on July 28, 1986, 51 FR 27899 (August 4, 1986) (hereinafter referred to as the "MSRP"). The MSRP announces a refund process for restitution of crude oil overcharges using the special refund procedures codified at 10 CFR Part 205, Subpart V. DOE will reserve initially 20 percent of crude oil overcharge funds to satisfy claims and disburse 80 percent of the funds to the State and Federal governments for indirect restitution. The DOE's Office of Hearings and Appeals (OHA) will accept and process refund applications from persons who can show they were injured by crude oil overcharges. After all valid claims are paid, unclaimed funds will be divided equally between the State and Federal governments. The Federal government's share of the unclaimed funds will be deposited into the general fund of the Treasury of the United States.

On August 8, 1986, the OHA issued an order announcing its intention to apply DOE's modified policy in all present and future Subpart V proceedings involving alleged crude oil violations. Refund proceedings then pending before the OHA to which the MSRP applies were listed in the Appendix to the order. Notice of the August 8 order was published at 51 FR 29689 (August 20, 1986). The order provided a period of 30 days for the filing of any objections to the application of the MSRP, and solicited comments concerning appropriate procedures to follow in processing refund applications in crude oil refund proceedings. In addition, the order stated that Applications for Refund may now be filed, and noted that it is not necessary to file applications in each of the refund proceedings listed in the Appendix.

The August 8 order summarized the OHA's preliminary view of the type of refund process and procedures that would be appropriate in the crude oil cases:

> We expect that many potential claimants in the oil industry itself—refiners, resellers

and retailers—will waive their claims for crude oil refunds in Subpart V proceedings and elect instead to take refunds under one of the escrow funds established under the settlement. In addition, most members of certain groups of petroleum product consumers who are participating in the settlement can also be expected to waive their Subpart V rights: surface transporters (buses, trucks and taxis), water transporters, railroads, airlines and oil burning electric utilities. However, other large consumers of petroleum products that are not covered by one of the escrow accounts established under the settlement are now in a position to file claims. It is likely on the basis of existing OHA precedent in the refund area that refunds made to successful claimants will be calculated according to a volumetric method, in which the amount of money available will be appropriated over all gallons of produce sold. *See* 48 FR 57608 (1983). It is also likely that small consumers will not receive refunds, since any refunds they receive will be smaller than the cost of processing their applications. We seek comments on the appropriateness of applying these precedents in crude oil refund proceedings.

51 FR at 29691.

The present notice considers the comments which the OHA received in response to the August 20 notice, and provides further guidance to assist claimants who wish to file refund applications for crude oil moneys under the Subpart V regulations.

I. Background

Before considering the comments, this notice provides a general background discussion. The DOE uses Subpart V proceedings to make refunds of oil overcharge funds to injured persons. *See* 44 FR 8566 (February 9, 1979). In the crude oil area, early Subpart V decisions permitted injured persons to file claims, and proposed to devide the remaining crude oil overcharge funds among the states, based on their proportionate consumption of refined petroleum products. *Office of Enforcement,* 9 DOE ¶ 82,521 (1982) *(Alkek); see also Office of Enforcement,* 9 DOE ¶ 82,553 (1982) *(Adams); Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) *(Amoco); A. Johnson & Co., Inc.* 12 DOE ¶ 85,102 (1984) *(A. Johnson).* Although more than 60 claims wer initially filed (mostly by refiners) in these early cases, major policy questions were unresolved, and these claims were not decided by OHA before the recent crude oil settlement.

On September 13, 1983, the United States District Court in Kansas referred the question of who was injured and in what amounts by the crude oil overcharges in the Stripper Well proceeding to the OHA for fact-finding. The court also solicited DOE's view on the proper means of restitution in the case. 578 F. Supp. 586 (D. Kan. 1983). In its decision to refer the matter to OHA, the court observed that although each party had a strong opinion on what remedy was best, there were no facts in the record on which to base a decision. 578 F. Supp. at 595.

After announcing procedures and some tentative conclusions, OHA held an evidentiary hearing over a 22-day period between June and October 1984. Sixty-four public and private entities participated in the evidentiary proceedings. The OHA accumulated a record of nearly 13,000 pages of written and oral testimony.

On June 21, 1985, the OHA submitted its fact-finding report to the court. *Report of the Office of Hearings and Appeals, In Re: The Department of Energy Stripper Well Exemption Litigation,* Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). The OHA Report concluded that it was generally impossible to trace the overcharges through any particular refiner's marketing system, and no methodology had been suggested which even attempted to accomplish this result. However, using sophisticated econometric techniques, some reasonable assumptions, and evidence in the record showing the movement of refined product prices in relation to crude oil costs over time, OHA was able to arrive at conclusions with a high degree of certainty regarding injury at the refiner level. The OHA determined that domestic refiners as a class absorbed between 2.7 and 8.1 percent of the crude oil overcharges, and that refiners passed on the remainder to the national petroleum distribution network and to consumers (end-users) of petroleum products by increasing the prices of the refined petroleum products which they sold.

DOE also submitted its 1985 crude oil refund policy statement to the court. It recommended that restitution to parties injured by crude oil overcharges should not be attempted, and that the Stripper Well overcharges be placed in escrow and held until the fall of 1986. As a practical matter, DOE's 1985 policy statement placed a moratorium on the processing of claims for restitution which had already been submitted to OHA in curde oil Subpart V cases. As noted in the MSRP:

> It was in that context that the parties to MDL 378 discussed the settlement of issues pertaining to the disposition of the court's escrow. In view of the similarity of restitutionary problems confronting the Department in other crude oil cases, and the uniform treatment of all such cases in the 1985 policy statement, DOE concluded that the settlement negotiations provided an appropriate vehicle for exploring the resolution of those issues in all crude oil cases.

51 FR 27899 at 27900 (August 4, 1986).

The settlement which led to DOE's modified restitutionary policy was the result of seven months of extensive negotiations among the various public and private interests to determine an appropriate disposition of crude oil overcharge funds. The scope of the settlement was extremely broad. It applies to the following three different types of crude oil overcharges:

> It addresses the distribution of crude oil violation funds obtained in cases alleging violations of the regulations governing the first sale of crude oil (10 CFR Part 212, Subpart D), the crude oil reseller regulations (10 CFR Part 212, Subparts F and L), and the entitlements regulations (10 CFR 211.66, 211.67, 211.69).

51 FR 27899 at 27900. Moreover, it considered the interests of all potential crude oil claimants: Those who were parties to the court case, MDL 378, and others who were injured by crude oil overcharges. Finally, it applies to crude oil moneys in the MDL 378 escrow, to crude oil moneys now in the DOE escrow, and to crude oil moneys obtained in other pending administrative and court proceedings.

For claimants who were parties to MDL 378, the settlement establishes a mechanism through individual escrow accounts for each group to receive a portion of the funds from the Stripper Well escrow, including refiners, resellers of refined petroleum products, retailers of gasoline and diesel fuel, agricultural cooperatives, domestic airlines, investor-owned utilities, surface transporters (fleet operators of trucks, buses and taxis), and rail and water transporters (railroads and operators of barges and American flag vessels). While the amounts each group will receive under the settlement were arrived at through negotiations, they were based on the sum of crude oil violation funds already collected plus the amount DOE believes it will recover in the future. For purposes of the settlement that total amount was estimated to be $4 billion. Consequently, as a condition to submitting a claim for a refund from any of these escrows, claimants are required to sign a waiver releasing any claims they might have against all other crude oil overcharge funds.

The settlement also provides a mechanism—implemented in DOE's MSRP—for other claimants to file for a refund from crude oil overcharges. Under the MSRP, those other persons will be allowed to submit refund claims

to the OHA under Subpart V, and they will be paid from funds collected by the Department in crude oil cases other than MDL 378. OHA will establish an initial reserve fund for these claims of up to 20 percent of all crude oil overcharge funds subject to Subpart V proceedings. The remaining 80 percent, and any unclaimed funds, will be divided between the State and Federal governments as representatives of the energy-consuming public.

II. Discussion of Comments Received

A. Introduction

In response to our publication of the August 8, 1986 order implementing the MSRP in the **Federal Register**, 51 FR 29689 (Aug. 20, 1986), the Office of Hearings and Appeals received eleven comments. Those submitting comments were: Farmers Union Central Exchange, Inc. (CENEX); the Transit Authority Refund Claimants Task Force; the American Public Transit Association; the Washington Metropolitan Area Transit Authority; Energy Watch, Inc.; System Fuels Inc.; a group of Ocean Carriers (I); the National Air Transportation Association; Philip P. Kalodner; various States, Territories and Possessions of the United States; and a second group of Ocean Carriers (II).

In general, the comments were brief since it was already made clear in the MSRP and the OHA's August 8, 1986 order implementing the MSRP that the crude oil refund process will be modeled after the process the OHA has used to evaluate claims based on refined product overcharges in previous Subpart V cases. Indeed, this has been confirmed in decisions issued by OHA since the August 8, 1986 order. As in non-crude oil cases, applicants will be required to document their purchase volumes and to demonstrate that they were injured by the alleged overcharges. The standards for showing injury which the OHA has used in analyzing claims for petroleum product overcharge funds will also apply to claims based on crude oil overcharges. *See, e.g., Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986), *citing Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). Refunds to successful claimants will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil overcharge moneys by the total United States consumption of petroleum products during the period of price controls (August 1973 through January 1981).

Next, we will discuss matters addressed in the comments that merit general attention. We will also consider a number of case-specific matters raised by individual commenters. Finally, for general guidance we will summarize the procedures OHA will apply in crude oil refund proceedings under Subpart V.

B. Pre-existing Subpart V Cases

The first area to consider concerns the manner in which the new crude oil restitutionary policy will apply to "pre-existing" crude oil Subpart V cases. This group consists of over 300 individual refund proceedings, including three large consolidated decisions (*Adams, Alkek* and *A. Johnson*) and the crude oil portions of "global" settlements (such as *Amoco*). These proceedings were announced several years before the settlement and the MSRP. The claims period in those cases has long since expired. However, as Ocean Carriers I have pointed out, no claims have yet been paid pursuant to those Subpart V procedures because of "major uncertainties as to DOE's policy for making refunds." Ocean Carriers I Comment at 4. They maintain that those proceedings should be reopened because of the fundamental change in DOE's crude oil refund policy reflected in the MSRP. Many consumers, including the Ocean Carriers, did not file individual claims in these proceedings, and in light of DOE's stated policy not to accept claims, it would have made little sense for them to do so. Ocean Carriers I Comment at 5. The States take the opposite position, contending that the early Subpart V crude oil cases should not be reopened for new claims, and that all moneys attributable to those cases be immediately paid out to the states and federal government as unclaimed funds. States Comment at 4. We agree that these cases should be reopened. The purpose of these Subpart V proceedings has always been to make equitable restitution to persons injured by crude oil overcharges, *see* 44 FR 8566 (February 9, 1979), and the OHA has authority under the governing regulations to issue ancillary orders to ensure that restitution is achieved. 10 CFR 205.288. That purpose should not now be frustrated by foreclosing direct restitution in these proceedings solely because of the passage of time Moreover, the period for end-users to file claims in these proceedings was never formally "opened." *See, e.g., Alfred B. Alkek*, 9 DOE ¶ 82,521, at 85,136; *see also Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553; *Amoco Brand Committee*, 10 DOE ¶ 82,556. OHA will therefore issue supplemental orders reopening the claims process in these proceedings. Notice of these actions will be published in the **Federal Register.**

C. Size of Reserve and Timing of Payments

In a related area, a number of commenters expressed opinions on the size of the reserve which the OHA should maintain for the payment of crude oil refund claims. Comments from potential claimants urged OHA to reserve more than 20 percent of the funds to avoid a possible shortfall in the amount required for payments to injured persons. However, the settlement permits only downward adjustment of the reserve from the initial 20 percent figure. The States advocated that less than 20 percent of the crude oil Subpart V funds be reserved for claimants. Since the OHA has had no experience in the crude oil refund area since the issuance of the MSRP, we believe that any action to adjust the reserve at this time would be premature.

We have also received comments that addressed the timing of payments under the Subpart V process, both to applicants and to state and federal governments. Commenters who represent potential applicants urge OHA to consolidate all crude oil refunds into one lump sum payment. The States press for immediate distribution of all moneys representing refunds to the states for indirect restitution. It is too early in the Subpart V process for the OHA to be able to make any definitive statements about the timing of refunds. It is clear that we are faced with a "rolling" process in which moneys will flow into and out of the escrow account as settlements are made and refunds determined. OHA will adhere to the Subpart V regulations which govern this process in order to give reasonable notice to the public of proposed refund procedures and to allow for the submission of applications for refund. Amounts not reserved for claims will be distributed promptly to State and Federal governments.

D. Calculation of Refunds

The next matter concerns the calculation of refund amounts in crude oil cases.[1] The August 8, 1986 order

[1] It should be noted that the method of calculating refunds relates only to the fair allocation of funds in the reserve to claimants to make restitution for the injury they suffered. *Cf.* Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99-509, section 3003(b) (Subpart V proceedings should establish the amount of injury claimants experienced from oil overcharges). This discussion has nothing to do with the amount of money that is reserved to pay claims, which was discussed at a previous point in this notice.

contemplated using a volumetric method for allocating the overcharges among each gallon of refined petroleum products sold in the United States during the period of federal price controls. That allocation would be made by dividing crude oil overcharge moneys ("the numerator") by the total U.S. consumption of petroleum products during the period of price controls ("the denominator"). 51 FR at 29691. *See Mountain Fuel,* 14 DOE ¶ 85,475 (1986); *A. Tarricone, Inc.,* Case No. KEF-0049 (proposed decision, September 23, 1986). Comments generally supported the volumetric approach, and because of its virtues we have determined that it should be followed in these cases. The volumetric approach presumes that alleged crude oil violations were spread equally and therefore increased the price of all gallons of petroleum products, rather than attempting to tie violations to any specific transactions. In fact, nearly all of the funds involved in these proceedigns were obtained through consent orders in which no actual violations were conceded. Moreover, during the period of price controls the Entitlements Program widely dispersed the impact of crude oil overcharges among domestic refiners, and caused the market price of all petroleum products to increase. *See generally* OHA Report. For these reasons, the volumetric method offers the fairest and most reasonable method for apportioning the crude oil overcharges involved over the products sold in the United States during the period of controls. The volumetric approach is also efficient, having been used by the OHA in hundreds of prior Subpart V refund proceedings involving refined petroleum products, and we conclude that it is equally suited for the crude oil area.

Both groups of Ocean Carriers maintained that the volumetric calculation should be modified in certain respects. First, Ocean Carriers I claimed that the denominator used by DOE in the cases cited above was inflated because it included petroleum consumption for the entire years 1973 and 1981. This is not correct. As we stated in *Mountain Fuel,* the denominator is "an estimate of the number of gallons of petroleum products consumed in the United States *during the period August 1973 through January 1981* (2,020,997,335,000)." 14 DOE at 88,868 n.4 (emphasis added). Second Ocean Carriers I and II contended that "the only fair way to calculate the volumetric refund amount is to include in the numerator *all* monies attributable to crude oil overcharges, including the *Stripper Well* monies." Ocean Carriers I Comment at 9; *see also* Ocean Carriers II Comment at 10.[2] They reasoned that since the denominator includes all refined products, and therefore crude oil, consumed in the United States during the period, it would be inconsistent and unfair if the numerator did not reflect all crude oil overcharges related to that consumption. The Carriers contend that the claimants in these Subpart V proceedings were injured by the Stripper Well overcharges just as much as by the crude oil overcharges of the many firms listed in the appendix to the August 20, 1986 **Federal Register** notice. For this reason, they contend that their refunds should take that injury into account. *Id.*

For the reasons explained below, we think the Ocean Carriers' position has considerable merit on both theoretical and practical grounds. To be equitable, restitution in Subpart V crude oil proceedings should reflect the amount of injury suffered from all crude oil overcharges, regardless of their source.

The volumetric method bases the calculation of refunds on an apportionment of crude oil overcharges over each gallon of product consumed in the United States during the period of price controls. These crude oil overcharges had the same general effect—they all caused the market price of each gallon of petroleum products to increase. Since the denominator includes all gallons of products consumed during controls, a fair volumetric apportionment should attempt to include in the numerator all alleged crude oil overcharge moneys received (including those that will be received in the future, assuming a reasonable degree of certainty as to the amount of future recoveries). In fact, this methodology was followed in the Stripper Well settlement, which addressed crude oil violation moneys contained in both the MDL 378 escrow and the DOE escrow, as well as DOE's estimated recovery of additional crude oil overcharges in the future, and provided for a joint resolution of refund claims based on those overcharges. The sum of these amounts—$4 billion—was the starting point for determining how much each group of parties to MDL 378 would receive in the settlement. Refunds to injured persons who were not parties to MDL 378, or non-waiving parties, are paid from the DOE escrow.[3] As stated by Judge Theis, the settlement agreement provides "an opportunity in special refund proceedings pursuant to 10 CFR Subpart V for non-settling [non-] waiving claimants to submit any claims of injury from an alleged crude oil violation." *In Re: The Department of Energy Stripper Well Exemption Litigation,* MDL No. 378 (D. Kan., July 7, 1986) (opinion and order approving settlement), skip op. at 13.

In order to treat Subpart V claimants on a fair restitutionary basis, the volumetric calculation must recognize that the total amount of all crude oil overcharges (including future recoveries) is much larger than the amount in each specific case made subject to Subpart V proceedings. In fact, use of only the crude oil overcharge amount available in each specific case made subject to Subpart V proceedings results in the *smallest* possible per-gallon allocaton of crude oil overcharges. As discussed below, additional crude oil overcharge amounts can be included in the numerator. These different numerator amounts result in a range of possible volumetric overcharge calculations that could be used in crude oil Subpart V proceedings.

The highest volumetric calculation would include all crude oil overcharges collected and to be collected in the future. For purposes of the settlement negotiations, that amount was estimated to be $4 billion. This number included crude oil overcharge moneys from several sources: (i) The amount then in the DOE escrow; (ii) the amount in the MDL 378 escrow; and (iii) the amount of estimated future recoveries. That figure could even be increased by an additional $2 billion to account for the crude oil overcharges determined in *United States v. Exxon Corp.,* 561 F. Supp. 816 (D.D.C. 1983). Inclusion of the Exxon overcharges would produce a total crude oil overcharge recovery figure of $6 billion and yield the highest volumetric overcharge in the range, approximately $0.003 per gallon of petroleum products purchased.

[2] The Transit Authority Refund Claimant Task Force makes a similar argument, urging OHA to deduct from the denominator the volumes of refined products sold to the groups of MDL 378 parties for whom specific escrow accounts were established in the settlement. Although this type of adjustment has some appeal, it would be too difficult to implement as a practical matter. All of the volumes that passed through petroleum product resellers and retailers were ultimately consumed by end-users, some of whom may apply for refunds themselves, and this could produce double or even triple counting of volumes. Because of these difficulties, accurately adjusting the number of gallons in the denominator might delay the crude oil refund process for several years. That result would defeat one of the principal purposes of the settlement: achieving an expeditious resolution of all crude oil refund clains.

[3] Different groups of claimants are to receive restitution either from the MDL 378 escrow or from another escrow account. Refunds to refiners and members of other groups that were parties to MDL 378 are paid from the MDL 378 escrow.

Inclusion of the entire $4 billion in total estimated recoveries alone, while excluding the Exxon overcharges, yields an overcharge amount of approximately $0.002 per gallon. This is the second highest figure in the range. The next largest refund formulation would take the $4 billion figure of estimated total recoveries, reduce it by $415 million—the amount being refunded in MDL 378 to firms in the petroleum product distribution chain (refiners, resellers and retailers)—and would yield an overcharge amount of approximately $0.0018 per gallon.

Another approach would be to include the $1.4 billion in the MDL 378 escrow at the time of settlement, minus the $415 million refunded to refiners, resellers and retailers, or $985,000,000, plus the crude oil overcharges that were in DOE's escrow account at the time of the settlement. The sum of these two figures is $1,654,662,389 which yields an initial volumetric overcharge amount of approximately $0.0008 per gallon. Under this formulation, as additional crude oil violation amounts are received in the future the volumetric overcharge amount would be increased. This "full party" approach would eliminate the need to consider any questions of "upstream" overcharge absorption by the refiners, resellers and retailers who supplied products to end-user claimants, since the amount of injury attributed to those intermediaries in the distribution chain is excluded from the numerator.

Finally, the lowest possible overcharge allocation in the range would exclude the Stripper Well overcharges entirely and include in the numerator only the amount of crude oil overcharges in the DOE escrow account at the time of the settlement ($669,662,389). This yields a volumetric overcharge of approximately $0.0003 per gallon.

Some of the volumetric formulations in the range described above have evident drawbacks. For example, the circumstances of the Exxon litigation can be distinguished, since the remedy devised by the District Court—refunds to state governments for the benefit of all consumers—was already completed before the Stripper Well settlement was concluded. In contrast, the lowest number (about one-tenth of the largest number in the range) is small in comparison and may not accurately reflect the level of injury suffered by Subpart V claimants. It clearly does not treat Subpart V claimants on a par with parties who received restitution from the MDL 378 escrow, since it would use a different, much smaller number for total crude oil overcharge recoveries. *Cf.* Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, section 3003(b) (Subpart V proceedings should establish the amount of injury claimants experienced from oil overcharges). Use of the smallest number in the range would also be most likely to produce repetitive claims and the need for administrative reprocessing because claimants would have to reapply for additional refunds as DOE received additional crude oil moneys.

We have concluded that the "full parity" method described above best achieves the restitutionary objectives of the settlement and should be used to calculate the volumetric overcharge amount in crude oil proceedings under Subpart V. This would produce a current volumetric refund amount of $0.0008 per gallon. The "full parity" approach compensates refund recipients in MDL 378 and in Subpart V proceedings on an equal footing and most fairly and equitably effectuates restitution for the injury they suffered as a result of crude oil overcharges. It is also the most administratively efficient for Subpart V proceedings since it tends to eliminate repetitive reapplications and obviates the need to consider nettlesome questions of "upstream" overcharge absorption by middlemen in the oil distribution chain.

E. Standards for Showing Injury

The next area of general interest concerns the standards for showing injury in crude oil refund proceedings under Subpart V. Several commenters advocated the use of the well-established presumption of injury for end-users (ultimate consumers), provided their business was unrelated to the petroleum industry. Others submitted comments that urged OHA to use presumptions of injury for resellers and retailers based on those adopted in various major refiner refund proceedings. A number of comments urged OHA to follow Subpart V precedents and permit claimants to use estimates to establish the number of gallons of petroleum products purchased. Related comments requested guidance on whether it was necessary for applicants to identify their suppliers in order to receive a refund. Finally, the States contend that Paragraph IV.B.1 [4] of the Settlement Agreement bans the use of these presumptions in Subpart V proceedings, and requires end-user claimants to submit detailed evidence of injury in order to receive refunds for crude oil overcharges.

The OHA intends to apply relevant precedents established in the petroleum product refund area to crude oil Subpart V proceedings. The States are incorrect in claiming that Paragraph IV.B.1 supports the position that no presumptions are to be permitted in crude oil Subpart V proceedings. To the contrary, Paragraph IV.B.1 specifically indicates that the settlement does not amend the Subpart V regulations. Section 205.282(e) of these regulations explicitly provides for the use of appropriate presumptions of injury in any Subpart V claim, and OHA has employed presumptions in thousands of refund cases since 1981. Presumptions are necessary because the Department's primary restitutionary policy is to pay injured persons, *i.e.* to do direct restitution. To achieve this, refund procedures must take account of the complexity of oil overcharge proceedings, difficulty in actually proving an overcharge, passage of time, difficulties in locating records and relevant market data, and the agency's expertise in the structure of the industry and its functioning during the period of controls. The Settlement Agreement itself took account of these factors and did not require any party to the Stripper Well Litigation to provide proof of injury in order to receive a refund. The settlement specified that there shall be a Subpart V claims process for injured persons who were not parties to the Stripper Well Litigation. The imposition of new standards for proof of injury

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[4] Paragraph IV.B.1 provides as follows:

B. Pending and Future Proceedings. DOE and the States agree:

1. *Modification of Policy.* In order to carry out its remedial authority under the ESA and EPAA, within 20 days following the date of the Approval Order, DOE will issue a modification of the Statement of Restitutionary Policy concerning Alleged Crude Oil Violations issued on June 21, 1985 (50 FR 27400; July 2, 1985). DOE will publish that modification (hereinafter the Modified Policy) in the **Federal Register.** The Modified Policy will state that the policy of DOE is to process applications for refunds pursuant to existing Subpart V regulations and that in such administrative proceedings involving Alleged Crude Oil Violations, OHA will continue to require that each claimant must affirmatively demonstrate that it has been injured by the alleged violation and that is should therefore receive a refund. *See e.g. Office of Special Counsel/Tenneco Oil Co.*, 9 DOE ¶ 82,538 at 85,206 (1982). The Modified Policy will state that individuals claiming such injury may file claims but OHA will not accept claims on behalf of classes, associations or trade groups. Nothing in the Modified Policy will preclude a claimant from attempting to prove injury through the use of econometric evidence of the type that was submitted in the Stripper Well evidentiary proceedings before the OHA nor preclude OHA from using the findings contained in the Report of the Office of Hearings and Appeals, *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., filed June 21, 1985). Nothing contained herein may be construed to amend the Subpart V regulations.

would be inconsistent with this provision.

The *Tenneco* decision cited in the settlement established procedures for distributing funds remitted by the firm pursuant to a DOE consent order. The *Tenneco* refund procedures incorporated several different kinds of presumptions. For example, firms that had already received refunds directly from Tenneco were presumed to be ineligible for further refunds from OHA. 9 DOE ¶ 82,538 at 85,201. Spot purchasers of Tenneco products were also presumed to be ineligible for refunds under Subpart V. *Id.* End users were not required to show they absorbed any overcharges in order to receive a refund. 9 DOE ¶ 82,538 at 85,202. Under the *Tenneco* standard an end-user had only to prove its volume of purchases from Tenneco in order to establish injury and receive a refund. *See, e.g., Tenneco Oil Co./Defense Logistics Agency*, 9 DOE ¶ 82,588 (1982). This is the same standard that OHA will apply in deciding crude oil refund claims submitted by end-users under Subpart V. The States' position confuses the requirement of showing absorption of overcharges, which was applied to refiners and resellers in adjudicating refund claims under Subpart V for refined petroleum product overcharges, with the different standard applied in those proceedings to end-users. Refiners and resellers (unlike end-users of refined petroleum products) had the opportunity under DOE statutes and regulations to pass through overcharges in the prices of the same products resold within the same regulated industry. Far from supporting the States' position, the page of the *Tenneco* decision cited in the Settlement Agreement does not relate at all to end-user claimants, but deals instead with Entitlements Program participants, *i.e.* refiners, and allocation claimants.[5] *Id.* at 85,206. Thus, the language on which the States rely is irrelevant to the treatment of end-user claimants. *Id.*

The States' position is insupportable as a matter of common sense as well. Under the presumptions we are adopting for crude oil refunds, end-users (ultimate consumers) whose businesses are unrelated to the petroleum industry need establish only the volume of petroleum products they purchased during the controls period to prove that they were injured by crude oil overcharges; they do not have to submit any further evidence to prove that they absorbed the overcharges. This policy furthers important practical goals. Analysis of the impact of crude oil overcharges on end-users is beyond the scope of a refund proceeding. *See Office of Enforcement: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983) at 88,308. End-users generally were not subject to price controls and were not required to keep records which justified selling price increases by reference to cost increases. If, for example, a brick manufacturer filed a claim for a refund on the fuel oil it purchased during the period August 1973 through January 1981, it is only reasonable to conclude that the firm was harmed by the amount of the crude oil overcharges allocated to the fuel oil which it used to manufacture bricks. Performing an economic analysis of the effect of the overcharges on the price of bricks would be duplicative.[6] Using the approach advocated by the States would be costly and inefficient and would mean that virtually no end-users would receive restitution for the crude oil overcharges they suffered. *See Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,050.

This standard for end-users has recently been described in a shorthand fashion as a "presumption of injury," but its use was based on the practical considerations noted above, a factor also underlying the standard for proving injury from antitrust violations (courts do not attempt to determine whether first purchasers were able to "pass on" the effects of the violation).[7] *See* Additional Comments of Philip P. Kalodner at 5–20, summarizing the development of OHA caselaw regarding refunds to end-user claimants. All of the presumptions we are adopting are rebuttable, and any interested party can submit evidence to show that a refund applicant in fact was able to pass on the crude oil overcharges or is not otherwise eligible to receive the refund which it seeks.

Three matters mentioned above deserve further discussion. The first question is whether applicants must identify their suppliers and prove their exact gallonage to receive refunds. In view of the finding in the OHA Report that crude oil overcharges increased the prices to consumers of all domestic petroleum products, applicants need not identify their suppliers in order to receive refunds. OHA Report, Fed. Energy Guidelines ¶ 90,507 at 90,620. For purposes of these crude oil overcharge proceedings, it matters only that the applicant purchased petroleum products in the United States market during the period August 1973 through January 1981. Following OHA precedent, reasonable estimates of purchase volumes will be permitted.

The second question is whether the presumptions of injury for resellers and retailers used in recent refined product Subpart V cases, such as *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986), should be permitted in crude oil refund proceedings. *See, e.g.*, Energy Watch Comment. These presumptions will *not* apply here. Applicants for crude oil refunds must show injury. 51 FR at 27901. There is an important distinction between product refund cases under Subpart V and crude oil cases which is particularly relevant to this issue. In a case like *Marathon*, in which refunds are made for alleged overcharges in sales of refined products, the overcharges were confined to purchasers of Marathon products, and the presumptions of injury for Marathon resellers reflect this fact. By contrast, market prices for refined products generally increased when crude oil overcharges occurred, and all resellers—regardless of their suppliers—were therefore affected by crude oil overcharges. Accordingly, a reseller or retailer must submit additional evidence to show the extent to which it absorbed crude oil overcharges. Under the circumstances, resellers and retailers will not be permitted to use presumptions to show they were injured in crude oil refund cases. These classes of applicants may, however, use the type of econometric evidence that was submitted to OHA in the Stripper Well proceeding to show that they were injured by crude oil overcharges. 51 FR at 27901; Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, section 3003(b)(2).

Finally, we should note that utilities have been permitted to receive refunds in Subpart V refund proceedings only to

[5] In fact, the page of the Tenneco decision cited in the Settlement Agreement specifically provides that allocation claimants "need not conclusively establish all of the elements of a violation on Tenneco's part and resulting injury on the claimant's part." 9 DOE at 85,206. Instead, "an applicant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of the injury which was sustained by the claimant." Id.

[6] By contrast, petroleum refiners and resellers had the opportunity under DOE statutes and regulations to pass through increased costs of refined petroleum products by raising the prices of the very same products that they charged to their customers. Since regulated firms in the petroleum industry were required to keep records showing how their cost increases justified price increases, OHA has generally examined the question of absorption versus passthrough when considering large refund applications submitted by these firms.

[7] *See* Hanover Shoe, Inc. v. United Machine Corp., 392 U.S. 481 (1968); Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977). This approach to end-user claims has also been applied to private enforcement actions brought under section 210 of the Economic Stabilization Act. Eastern Airlines, Inc. v. Atlantic Richfield Co., 609 F.2d 497 (Temp. Emer. Ct. App. 1979).

the extent that they notify the applicable state regulatory body and pass on the entirety of the refund to their retail customers. For example, in *A. Tarricone, Inc./Consolidated Edison Company of New York, Inc.*, 15 DOE ¶ 85,038 (1986), the utility received a refund based upon its purchases of product after it had certified "that as a regulated utility it will notify [the state utility commission] of any refund received and will also pass such refund on to its retail customers on a dollar for dollar basis." 15 DOE at 88,074. To receive a refund in any crude oil refund proceeding, a regulated utility will have to submit a similar certification.

F. Case-Specific Comments

We will next direct our attention to two case-specific comments that were received in response to the August 20, 1986 **Federal Register** notice. The first of these comments was submitted by CENEX, and the second was submitted by the National Air Transportation Association (NATA).

CENEX is a large regional agricultural cooperative headquartered in St. Paul, Minnesota, whose members include local cooperatives located throughout the northern tier states. One of the Subpart V crude oil cases, No. HEF-0359, involves an April 1981 consent order between CENEX and DOE which settled in alleged $0.13 per barrel posted price violation by the cooperative for $150,000.

Refund procedures for the CENEX consent order were established in *A. Johnson*, 12 DOE ¶85,102 (1984), and the funds will be subject to claims under the MSRP. CENEX claims that consolidating the CENEX consent order funds with all other crude oil moneys in DOE's escrow is improper since the oil was used by its refineries, and any overcharges from the posted price violation were not dispersed by the Entitlements Program, but borne exclusively by its member-cooperatives. CENEX asserts that despite the waivers it has executed to receive MDL 378 refunds (both as a refiner and a cooperative) which released all claims against crude oil moneys subject to Subpart V, its members were the only one injured by its posted price violations, and it should be allowed to filed a claim for crude oil refunds.

We do not believe that the position taken by CENEX is correct; however, we will not in this notice make a final determination on any claim. As a party to MDL 378, CENEX agreed to the consolidation of all types of alleged crude oil violations for purposes of the settlement and the MSRP, even though it knew or should have known that the funds in OHA Case No. HEF-0359 would be subject to general claims, rather than refunded exclusively to its members. *See* 51 FR at 27900 (settlement "addresses the distribution of crude oil violation funds obtained in cases alleging violations of the regulations governing the first sale of crude oil . . . ."). In our view, CENEX must live with the consequences of its participation in the settlement negotiations. The releases which it must execute to receive refunds from the MDL 378 escrows clearly indicate that the firm waives its Subpart V claims. CENEX (and any of its members) may nevertheless file claims for portions of the Subpart V crude oil moneys, and we will consider their arguments in detail at that time. It should be obvious from the foregoing, however, that CENEX and its members have a substantial burden to prove that they should receive crude oil refunds under Subpart V.

The NATA is a national trade association representing the resellers of aviation fuels known as "fixed base operators." According to NATA, most of its members are planning to take refunds from MDL funds through the resellers escrow, and they will be required to waive their claims against the Subpart V moneys. However, NATA points out that some of its members also operate flight schools and air taxis in which they are end-users of aviation fuel. NATA's comment asked OHA to advise it whether its "dual purchaser" members waive their right to file for Subpart V refunds if they obtain an MDL 378 refund from the resellers escrow. It seems clear that the NATA resellers which elect to file for resellers escrow refunds waive their rights to file for Subpart V refunds as end-users, based on the language of the Resellers Notice of Settlement and the actual text of the resellers waiver and withdrawal of claims provisions in the Settlement Agreement at Exhibit B. Moreover, this position was also stated by former ERA Solicitor Carl A. Corrallo in the June 12, 1986 hearing on the settlement before Judge Theis. *See* Transcript of June 12, 1986 Hearing, MDL No. 378 (D. Kan.) at 23-34. Likewise, in the July 7, 1986 order approving the settlement, Judge Theis indicated the court's view that "all parties and claimants receiving funds under the agreement will waive any further claims to crude oil refunds." *In Re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan., Jul. 7, 1986) (opinion and order approving settlement), slip op. at 13. The court also stated that the claims procedures established for the various MDL 378 escrows adequately compensated parties for the claims they waived. *Id.* at 22. As noted above, the MSRP and the OHA's August 8, 1986 order implementing the MSRP also state that MDL 378 parties who execute waivers cannot also apply for refunds under Subpart V.

III. Summary of Crude Oil Refund Procedures

The guidelines which follow provide a general summary of the standards which the OHA will apply in crude oil refund proceedings, under Subpart V. It should be recognized, however, that under those regulations, standards and procedures governing the evaluation of refund claims must be contained in a final Decision and Order issued pursuant to 10 CFR 205.282(c) and published in the **Federal Register**. All Subpart V refund proceedings involving alleged crude oil violations where the claims deadlines have expired before issuance of the MSRP will be reopened for claims by issuance of appropriate orders in the near future. All cases involving alleged crude oil violations where a Proposed Decision and Order establishing procedures has been issued will be finalized pursuant to § 205.282(c). It is likely that funds from many different cases will be consolidated to maximize the administrative efficiency of the process. *See, e.g., A. Tarricone, Inc.*, Fed. Energy Guidelines ¶ 90,060 (proposed decision, September 23, 1986) (consolidation of 28 cases). OHA will accept and process refund applications from persons who claim they were injured by alleged crude oil violations. Because the process is new, adequate notice to the public of the opportunity to submit claims is important. 10 CFR 205.283(b). Although no deadline will be established in this notice for the submission of claims or the payment of refunds, final Decisions and Orders in these cases will set deadlines for the submission of refund applications. Amounts not reserved for the payment of claims will be distributed to State and Federal governments.

As in non-crude oil cases, applicants will be required to document their purchase volumes and demonstrate that they were injured. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,474 (1986). Following Subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 (1986). Applicants who were end-users (ultimate consumers) of petroleum products whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations are presumed to have absorbed rather than passed on alleged

crude oil overcharges, and need not submit any further evidence of injury beyond volumes of product purchased in order to receive a refund. *Id.* It is not necessary for applicants to identify their supplier of petroleum products in order to receive a refund. Resellers and retailers of petroleum products must submit detailed evidence of injury, and may not use presumptions of injury established by OHA in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type used in the OHA Report to the District Court in the Stripper Well litigation, MDL No. 378 (D. Kan.), Fed. Energy Guidelines ¶ 90,507 (June 19, 1985), and OHA intends to use the Report in evaluating refund applications submitted under Subpart V. Parties to MDL 378 who received refunds from one of the escrows established in the settlement will have waived their rights to apply for crude oil refunds under Subpart V.

Refunds will be calculated using a volumetric method in which the amount of crude oil overcharge funds will be divided by the total United States consumption of refined petroleum products during the period of price controls (August 1973–January 1981). The numerator of this volumetric refund calculation will include the $1.4 billion in the MDL 378 escrow at the time of the settlement, minus the $415 million refunded to refiners, resellers and retailers, or $985 million, plus the crude oil overcharges in DOE's escrow account at the time of the settlement. As indicated earlier, the latter amount is $669,662,389. The sum of these two figures is $1,654,662,389, which yields an initial volumetric refund of approximately $0.0008 per gallon. This calculation is subject to further adjustment as additional crude oil moneys become available in the DOE escrow and are made subject to the crude oil claims process.

No application forms will be provided. Instead, end-users should submit the material outlined below in the form of a letter. The letter should include the following information: (a) A short description of the applicant's business and use of petroleum products; (b) the total number of gallons of domestic petroleum products used during the period August 19, 1973 through January 27, 1981 broken down by product; (c) an explanation of how the applicant obtained the volume figures above; (d) a statement that the applicant, its parent firm, affiliates, etc., have not elsewhere waived their right to a refund; and (e) if the applicant did business under more than one name or a different name during the period of price controls, a list of the names which it used. Resellers and retailers should submit all of the information outlined above, plus additional evidence to show that the applicant was injured, *i.e.* that it did not pass all overcharges through to its own customers. The telephone number for a contact person who can answer questions about the application should be provided, and the letter should indicate the name and address of the person who should receive the refund check. The application should be typed or printed, and mailed to the following address:

Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585

A current taxpayer identification number or Social Security number must also be included in the letter. Applicants may be required to submit additional information to document their refund claims.

Under the MSRP, up to 20 percent of the alleged crude oil violation amount may be reserved for the payment of claims to injured persons. For the present time, OHA has decided to reserve the entire 20 percent to ensure that adequate funds will be available for refunds. The remaining 80 percent of the funds will be disbursed to state and federal governments for indirect restitution under the formulae governing those disbursements which are specified in the Settlement Agreement. However, those funds are subject to the same reporting requirements as all other crude oil moneys received by the States under the settlement.

Dated: April 6, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87–8097 Filed 4–9–87; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Rio Grande Project; Rate Order

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a rate order—Rio Grande Project.

SUMMARY: Notice is given of Rate Order No. WAPA–28 of the Under Secretary of the Department of Energy for placing an increased power rate into effect on an interim basis beginning on the first day of the April 1987 billing period for power marketed by the Western Area Power Administration (Western) from the Rio Grande Project. This is a minor rate adjustment.

The wholesale composite power rate for all project firm power is 36.92 mills per kilowatthour (kWh). This is an increase of about 6.07 mills over the previous rate for firm energy and capacity. The rate was last adjusted in 1984.

The rate order further explains the rate adjustment and discusses the principal factors leading to the decisions on the rate increase and responds to the comments offered during the rate adjustment proceeding.

EFFECTIVE DATE: The rates will become effective on the first day of the April 1987 billing period.

FOR FURTHER INFORMATION CONTACT:

Ms. Marlene Moody, Deputy Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147, (810) 524–5493

Mr. Conrad K. Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1535

Mr. Ronald K. Greenhalgh, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5581

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664, December 14, 1983), as amended (51 FR 19744, May 30, 1986), the Secretary of Energy delegated to the Administrator of Western the authority to develop power and transmission rates; to the Under Secretary of the Department of Energy the authority to confirm, approve, and place such rates in effect on an interim basis; and to the Federal Energy Regulatory Commission the authority to confirm, and approve, and place in effect on a final basis, to remand, or to disapprove such rates.

The proposed rate adjustment and a 30-day customer consultation and comment period were initiated on May 30, 1986, with an announcement of the proposed rate adjustment published in the **Federal Register** at 51 FR 19600. On May 22, 1986, letters were sent to customers and other interested parties with copies of the rate brochure dated May 1986 and an agenda announcing an informal public meeting to be held May 30, 1986. Written comments were accepted through July 14, 1986.

Public comments received have been considered in the preparation of the rate order. Corrections were made to the

final revised FY 1985 PRS in February 1987, and a composite rate of 36.92 mills per kWh was determined as a result of this updated PRS.

Rate Order No. WAPA–28 confirming and approving an increased power rate on an interim basis is hereby issued, and the rate will be promptly submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Washington, DC, March 27, 1987.

Joseph F. Salgado,

Under Secretary.

Department of Energy Under Secretary

Order Confirming, Approving, and Placing an Increased Power Rate in Effect on an Interim Basis

March 27, 1987.

In the matter of: Western Area Power Administration—Rio Grande Project Power Rate; Rate Order No. WAPA–28.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, Chapter 1093, 32 Stat. 388 (1902), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Rio Grande Project (RGP) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664, December 14, 1983), as amended (51 FR 19744, May 30, 1986), the Secretary of Energy delegated the authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); the authority to confirm, approve, and place in effect such rates on an interim basis to the Under Secretary of the Department of Energy; and the authority to confirm, approve, and place in effect on a final basis, to remand or to disapprove those rates to the Federal Energy Regulatory Commission (FERC). The rate order is issued pursuant to the delegation to the Administrator and the Under Secretary and the rate adjustment procedures at 10 CFR Part 903, published at 50 FR 37837 on September 18, 1985.

Background

Project History

The RGP initially was authorized as an irrigation project by the Act of February 25, 1905, chapter 798, 33 Stat. 814. Elephant Butte Dam was completed in 1916. The construction of Caballo Dam, a flood control and reregulating structure located downstream from Elephant Butte, took place in accordance with the Convention on Rectification of the Rio Grande, February 1, 1933, 48 Stat. 1621. The Caballo Dam was completed in 1938.

The Interior Department Appropriation Act, 1938, chapter 570, 50 Stat. 564, allowed for power facility construction and provided for the application of power revenues toward repayment of the project. The Elephant Butte Powerplant and a 115–kV transmission system were constructed between 1938 and 1940. Additional transmission features were added between 1941 and 1952. Parts of the transmission system were sold in FY's 1973, 1979, and 1983 so that now the power system consists of the Elephant Butte Switchyard and the Elephant Butte Powerplant. The project is operated primarily as an irrigation water supply project. Power generation is incidental and secondary in priority. The project power system is connected to the system of Plains Electric Generation and Transmission Cooperative (Plains) at the Elephant Butte Switchyard.

Present customers for the project power are Plains and the City of Truth or Consequences, New Mexico.

During the first 10 years of operation (1941–1950), when the water supply was adequate, the project repaid $1,696,207 of the power investment and $1,004,680 in interest on the investment. Beginning in 1951 and continuing through 1979, the project has had annual deficits mainly due to a long-term shortage of water supply for generation. Above normal water conditions have occurred from 1980 through 1985.

The project power system was designed to operate year-round; however, due to the low water from 1950 through 1979, generation was confined to about 8 months a year, from February through September. In the mid-1960s, Colorado River Storage Project (CRSP) power became available for sale in New Mexico. Joint RGP and CRSP power sales contracts were negotiated with the RGP preference customers, and arrangements between the projects were made. As a result of these arrangements, RGP power has been firmed up by CRSP power during the summer season. This has made it possible for RGP to sell 24 MW of power during the summer season at firm rates, compared to roughly 9 MW previously. Through seasonal agreements, 51,568,000 kWh were sold to Plains as excess nonfirm winter season energy from FY 1983 through FY 1985 at rates from 20–22 mills per kWh.

Power Repayment Studies

A Power Repayment Study (PRS) for the RGP is prepared annually by Western with the cooperation of Reclamation to ensure that revenues will be adequate to repay costs. Power generation and project operational data are provided by Western and Reclamation. A PRS is prepared in accordance with RGP authorizing legislation, the Reclamation Project Act of 1939, other applicable statutes, and with DOE Order No. RA 6120.2 on power marketing administration financial reporting.

The studies array historic income, expense, and investments to be repaid from power revenues, along with estimates for future years. The studies show the annual repayment of power production and transmission costs, as well as nonpower costs assigned to power for repayment, through the application of revenues over the repayment period of the project. The studies also show yearly estimated revenues and expenses over the remainder of the study period, the estimated amount of Federal investment repaid during each year, and the total estimated amount of Federal investment remaining to be repaid at the end of each year. Revenue is applied in a manner that minimizes RGP revenue requirements by repaying the highest interest bearing investments first while ensuring that all investments are paid within their allowed repayment periods. The studies determine revenue requirements but do not deal with rate design.

A final revised FY 1985 PRS was completed in April 1986. This study was run using actual, rather than estimated, data for FY 1985 and used an interest rate of 11.375 percent for FY 1986 and beyond. The increased interest rates for replacements and additions and increases in the operation and maintenance (O&M) expenses have significantly increased the project operating expenses. As a result of the increased interest and O&M expense, the project revenues are not sufficient to meet repayment requirements. The final revised FY 1985 PRS showed that a composite rate of 37.32 mills/kWh was necessary to repay project obligations in a timely manner. The final revised FY 1985 PRS was updated in February 1987 to incorporate changes. These changes were to (1) reduce the projected expense for movable property by $10,000 annually for FY 1991 and beyond, (2) correct the audit expense to show $25,000 annually instead of $45,000 annually for FY 1991 and beyond, and

(3) recalculate the historic deficit and correct arithmetic errors for the years 1980 through 1985. This updated final revised FY 1985 PRS produced the composite rate of 36.92 mills/kWh.

Existing and Increased Rates

The increased rates which are the subject of this rate order supersede the existing rates as follows:

	Existing rate	Increased rate
Firm Energy—mills/kWh	30.85	36.92
Effective date	October 1984 billing period.	April 1987 billing period.
Rate schedule	RGP-F2	RGP-F2.

Since the annual sales for Rio Grande are usually less than 100 million kWh, Western has determined that this is a minor rate adjustment.

Public Notice and Comments

Published "Procedures for Public Participation in Power and Transmission Rate Adjustments" for power marketed by Western and other power marketing administrations have been followed in the development of these rates. The following discussion summarizes the steps Western took to assure involvement of interested parties in the rate process.

1. Advanced announcement was made to the customers that a power rate adjustment was being considered and that preliminary studies indicated the composite rate would need to be increased from the existing rate to about 37.32 mills per kWh.

2. A **Federal Register** notice (51 FR 19600, May 30, 1986) announced the commencement of a public consultation and comment period.

3. A letter dated May 22, 1986, was sent to the project's customers and other interested parties announcing an informal public meeting and also transmitting a brochure dated May 1986, which provided information on the proposed adjustment.

4. An informal public meeting was held May 30, 1986, in Albuquerque, New Mexico. Western explained the need for the rate increase and presented the results of the FY 85 revised PRS completed April 1986, upon which the proposed rate increase was based. The composite rate proposed for firm energy and capacity was 37.32 mills per kWh. Customer representatives asked questions and provided preliminary comments. Some questions were answered during the meeting and others were answered later in writing.

5. The consultation and comment period (May 30 through July 14, 1986) provided for the receipt of oral and written comments.

Certification of Rates

With the new rate in effect, the Administrator has certified that RGP power will be sold at the lowest possible rate consistent with sound business principles. The rate has been developed in accordance with administrative policies and applicable laws.

Discussion

The discussion below relates to PRS issues, the customer comments (received from only one customer), and to procedural matters. There were no rate design issues raised during the public consultation and comment period.

Project Integration

Comments received about project integration suggest that due to the benefits of integrating the Rio Grande, Collbran, and Colorado River Storage Projects, Western should consider implementing an integrated rate effective April 1987.

Western recognizes the benefits of integration and is proceeding with plans to establish an integrated project rate at the earliest possible date. Due to the length of time required for the public process, the integrated project rate is expected to become effective between June and October 1987.

Because the initial power investment in the Rio Grande Project must be repaid by the end of FY 1990, Western is not willing to defer a rate increase pending the establishment of an integrated rate because any delay in the establishment of the integrated rate would jeopardize timely repayment of the RGP power investment.

Operation and Maintenance

Comments received about O&M costs centered on views that: (1) An average increase of 36 percent in projected O&M expenses is unreasonable; (2) Western's O&M, which varies from a high of $112,000 in 1986 to a low of $43,000 in 1987, may include costs for replacements or additions that should be capitalized; (3) Reclamation O&M-administrative and general (A&G) expense seems high given the size and type of the project; (4) movable equipment amortization appears to be too large for a project of this size; and (5) Elephant Butte Powerplant and Caballo Dam payroll and materials and supplies expense are inappropriately increasing even though the plant is being automated. Each of these questions will be addressed in the following sections.

Average Increase in O&M: While the commenter has chosen to compare the projections in the FY 1983 revised PRS to the projections in the final revised FY 1985 PRS, Western feels that it is more appropriate to compare the future projections to the actual historical O&M. The following table shows both historical and projected O&M expenses.

FY	Historical O&M (dollars)	FY	Projected O&M expense (dollars) [1]
1981	762,440	1986	1,206,675
1982	852,450	1987	1,164,739
1983	1,128,826	1988	1,248,739
1984	889,552	1989	1,208,313
1985	918,302	1990	1,271,313

[1] Projected O&M is taken from the FY 1985 budgets.

The historical O&M expense increased from $762,440 to $918,302 from FY 1981 to FY 1985. This is an average annual increase of 4.8 percent. From FY 1985 to FY 1990, O&M is projected to increase from $918,302 to $1,271,313, an average annual increase of 7.5 percent. Part of the increase in projected costs is due to the inclusion of the independent audit expense, which is $75,000 in FY 1986 and $45,000 in both FY 1988 and FY 1990. These audits are a new expense, are required every 2 years, and will be a permanent O&M expense.

Western's O&M: Western's O&M expenses consist primarily of wheeling expense, direct labor for rate calculation and public process, administrative and general expense, power billing expense, and independent audit expense. None of these expenses should be capitalized, and there are no replacements or additions included in O&M.

The fluctuations in these projected expenses are due to independent audits on the project which are required by Department of Energy Order No. RA 6120.2 at least every 2 years. This expense has not been included in previous PRSs. A breakout of the audit expense follows:

	1986	1987	1988	1989	1990
Western's O&M less Audit Expense (dollars)	53,000	59,000	60,000	61,000	61,000
Audit Expense (dollars)	75,000	0	45,000	0	45,000
Total O&M Expense (dollars)	128,000	59,000	105,000	61,000	106,000

Estimates beyond FY 1990 are projected at $86,000, including an

average of $25,000 per year for audits. In reviewing the final revised FY 1985 PRS, Western noted that the $45,000 audit expense for FY 1990 was carried over to future years. The amount should have been an average of $25,000 annually for FY 1991 and beyond. Western has made this correction in the PRS; however, the $20,000 difference is small and does not affect the overall rate.

Administrative and General Expenses: Payroll is the largest single item of Reclamation A&G expenses and includes a percentage of the payroll expenses for the Chief of Power and Storage Division (100 percent) and part of the division staff (55 percent), the Project Superintendent and his staff (30 percent), the Chief of Administrative Services Division and his staff (48 percent), and the Chief of Water and Land Division (2 percent). Power has responsibility to pay approximately 50 percent of the above listed A&G expenses.

Past experience shows that Reclamation O&M–A&G expenses projected for FY 1986 through FY 1990 are reasonable. From FY 1981 through FY 1985, the portion of Reclamation O&M budget that went to A&G expenses ranged from a low of 51.6 percent in FY 1983 to a high of 76.2 percent in FY 1985. Projections of Reclamation O&M expenses include 51.3 percent for A&G in FY 1986 and 53.1 percent in FY 1986 through FY 1990.

Movable Equipment Amortization: Western took a much closer look at the movable equipment in the final revised FY 1985 PRS, and determined that some items previously classified as additions or replacements should have been classified as movable equipment. Movable equipment is amortized and charged to O&M over a 5-year period. The following table lists the items now classified as movable equipment for the period FY 1986, 1990. Items previously called additions are indicated with an "A," replacements with an "R."

Item	Total (dollars)
1986	
Vehicles	40,000
Service Truck	50,000 A
Telescopic Crane	160,000 A
1988	
Vehicles	50,000
Crawler/Tractor	120,000 R
Powerplant Jib Crane	20,000 A
1989	
Vehicles	20,000
Word Processor	10,000 A
1990	
Loader/Backhoe	60,000 R
Office Copier	10,000 R
Vehicles	20,000

Vehicle purchases are a new movable equipment item because of a change in the General Services Administration policy which requires Reclamation to begin purchasing its own vehicles in FY 1986. This amount is higher in FY 1986 and 1988 than in FY 1989 and 1990 because of initial vehicle purchases. Western agrees with the customer's comment that $112,000 annually beyond FY 1990 is too high a level of purchase because the initial vehicle expense will not be repeated.

Therefore, Western has lowered the movable equipment expense by $10,000 annually for 1991 and beyond. However, the overall rate has not been affected by this change.

Reclamation has confirmed that all of the movable equipment is required, regardless of the size of the project.

Payroll and Materials and Supplies Expense: Funds were diverted from the O&M budget in FY 1985 to take care of an emergency unit overhaul. Therefore, the actual O&M amount shown in 1985 is low. The O&M work delayed by the emergency unit overhaul must be rescheduled resulting in higher budgets for the following years.

The Branch Chief position at the Elephant Butte Powerplant was filled at approximately $40,000 per year.

Reclamation expects powerplant automation to be completed in FY 1987. At that time the units will be controlled by a unit controller at Elephant Butte Powerplant rather than by supervisory control from another Reclamation facility. Although Reclamation anticipates a reduction in the powerplant work force due to automation, it is also expected that maintenance costs will increase and offset the decrease in personnel costs.

Replacements

The commentor stated that the historical trend in replacements does not justify the projected replacements increase for FY 1986 to 1990. The commentor feels that the calculated IDC is high given the actual investment in replacements; and that the extraordinary O&M (EOM) expenses, constituting 50 percent of the replacement cost, are quite large.

The historical replacements shown in the final revised FY 1985 PRS for FY 1984–1985 are considerably less than the actual replacements made. Most of the replacements scheduled for those years were completed, but were not transferred from "Construction Work in Progress" to "Plant in Service" until FY 1986. This is the reason for the great difference in the replacement figures between the FY 1983 and the final revised FY 1985 PRS for years 1984 through 1986. A comparison of the totals of those 3 years are as shown in the following table:

FY year	FY 1983 revised PRS (dollars)	FY 1985 final revised PRS (dollars)	FY Difference (dollars)
1984	106,000	10,496	(95,504)
1985	132,000	0	(132,000)
1986	221,000	590,435	369,435
Subtotal	459,000	600,931	141,931
1987	74,000	274,231	200,231
1988	60,634	462,903	402,269
1989	108,835	609,129	500,294
1990	776,866	368,892	(407,974)
Total	1,479,335	2,316,086	836,751

The differences are primarily due to (1) revised estimates for future year replacements which normally change as the future year draws closer and a more accurate estimate can be made, (2) the inclusion of $238,351 of IDC which had not previously been included in the PRS, and (3) the addition of $960,846 for EOM expenses.

IDC had not been calculated in previous PRSs as required in section 11 of DOE Order No. RA 6120.2. Each year the Secretary of the Treasury provides Western with the interest rate to be used in calculating IDC and interest on the investment. This rate is the "yield rate," which is the average yield during the preceding fiscal year on interest bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity. The average yield is computed as the average during the fiscal year of the daily bid prices. Where the average yield so computed is not a multiple of one-eighth of 1 percent, the yield rate is rounded to the multiple of one-eighth of 1 percent nearest such average yield.

The specific interest rate to be used for each replacement is the interest rate for the year in which construction is initiated. In FY's 1,984, 1985, and 1986, this yield rate was 10.75, 12.375, and 11.375 percent, respectively. Beginning on October 1, 1983, IDC was compounded annually.

Extraordinary maintenance is maintenance that is of an infrequent or unusual nature such as a unit overhaul, painting of penstocks, or a generator rewind. Although this type of maintenance is at first done with O&M funds, it is actually maintenance that should be classified and capitalized as either additions or replacements. The following list shows the EOM items that have been reclassified as replacements:

Powerplant crane.
Unit overhaul (2).
Repair draft tube gate/guide.
Painting of penstocks.
Concrete repair.

Generator rewind (1 and 3).
Rock scaling.
Generator cooling water system.
Elephant Butte Dam sediment survey.

Capital Expenditures

The commentor was also concerned about the considerable increase in the projection of capital expenditures. Western has stated that the primary causes are increases in the projected costs of powerplant modifications, powerplant emergency station service equipment, and other miscellaneous increases and items not previously projected. In response to the commenter's data request, Western has stated that the main reasons for the increase are: (1) Higher projections of project costs, including IDC; and (2) EOM expenses capitalized as additions. The average capital expenditure for 1981 to 1985 was $195,800, while Western is projecting an average capital expenditure from 1986 to 1990 of $277,800, an increase of approximately 42 percent.

The historical additions shown in the records for FY 1981 through FY 1985 are misleading. The FY 1984–1985 additions (final revised FY 1985 PRS) are recorded as zero. However, most of the additions scheduled for those years were completed, but will not be transferred from "Construction Work in Progress" to "Plant in Service" accounts until FY 1986 or FY 1987. This is the reason for the great difference in the addition's figures between the FY 1983 and the FY 1985 PRSs for years 1984 through 1986, as shown in the following table, and also the reason why a direct comparison between FY 1985 and prior and the years after FY 1985 would be inaccurate.

FY year	FY 1983 revised PRS (dollars)	FY 1985 final revised PRS (dollars)	Difference (dollars)
1981	134,836	134,836	0
1982	428,886	428,886	0
1983	484,033	484,033	0
1984	179,000	0	(179,000)
1985	70,000	0	(70,000)
1986	80,000	176,947	96,947
1987	125,000	793,060	668,060
Subtotal	1,501,755	2,017,762	516,007
1988	0	26,736	26,736
1989	0	103,844	103,844
1990	0	285,357	285,357
Total	1,501,755	2,433,699	931,944

The differences in FY 1987–1990 are primarily due to (1) revised estimates for future year additions which normally change as the future year draws closer and a more accurate estimate can be made, (2) the inclusion of $172,901 of IDC which had not previously been included in the PRS, and (3) the addition of $56,146 for EOM.

IDC had not been calculated in previous PRSs, as required in section 11 of DOE Order No. RA 6120.2. The specific interest rate to be used for each addition is the interest rate for the year in which construction is initiated. In FY's 1984, 1985, and 1986, this yield rate was 10.75, 12.375, and 11.375 percent, respectively. Beginning on October 1, 1983, IDC has been compounded annually.

Riprap at Caballo Dam and liner repair in the outside tunnels are additions that had been previously classified as EOM.

Interest Rate

The commentor's last area of concern was the interest rate applied to power investments and replacements. The rate of 11.375 percent for the years 1986 and beyond, used by Western in its projections, seemed high to the commentor compared to the current interest rates of Federal securities. The commentor asserted that the average yield rate for 1985 securities of 10 years and longer to maturity was approximately 10.8 percent, which is considerably lower than the 11.375 percent used by Western.

DOE Order RA 6120.2 states that interest rates are to be obtained from the Secretary of the Treasury and based on the preceding fiscal year yield rate on Federal marketable securities with 15 years or more remaining to maturity. Western uses the latest available interest figure at the time the projections are made for future years. The letter from the Department of the Treasury, dated October 16, 1985, states, "The interest rate . . . is 11.40% which adjusted to the nearest 1/8th of 1% is 11 3/8%."

Environmental Evaluation

In compliance with the National Environmental Policy Act (NEPA) of 1969 and section D of the Department of Energy guidelines published in the **Federal Register** on February 23, 1982 (47 FR 7976), Western has followed the process described below in conducting environmental evaluations of the rate adjustment.

Section D of the DOE guidelines states that the level of documentation required for rate increases for power marketing administrations depends upon the size of the rate increase as it relates to the rate of inflation since the last rate increase. The Consumer Price Index (published by the Department of Labor) was used to estimate the rate of inflation from the date of the last rate increase to the planned date of the new increase. Because the power rate increase is 19 percent, which is expected to exceed the rate of inflation over the interval since the last rate adjustment, it was determined that an Environmental Assessment (EA) was required. Western prepared an EA which was submitted to DOE. DOE issued a "Finding of No Significant Impact" on September 23, 1986. These documents are on file in Western's offices.

Executive Order 12291

The DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western has received an exemption from sections 3, 4, and 7 of that order, and therefore will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including studies, comments, and other supporting material, is available for public review in the Salt Lake City Area Office, Western Area Power Administration, 438 East 200 South, Suite 2, Salt Lake City, Utah 84111; in the Office of the Director, Division of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401; and in the Office of the Assistant Administrator for Washington Liaison, Room 8G061, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Submission to the FERC

The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

In view of the foregoing the pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve and place in effect Rate Schedule RGP–F3 on an interim basis, effective on the first day of the April 1987 billing period. The rate shall remain in effect on an interim basis pending FERC confirmation and approval of this or a substitute rate on a final basis, or until superseded.

Issued in Washington, DC, March 27, 1987.

Joseph F. Salgado,

Under Secretary.

Department of Energy, Western Area Power Administration

Rate Schedule RGP-F3 (Supersedes Schedule RGP-F2)—Rio Grande Project, New Mexico, Texas—Schedule of Rates for Wholesale Firm Power Service

Effective: Beginning on the first day of the April 1987 billing period.

Available: In the area served by the Rio Grande Project.

Applicable: To wholesale power customers for wholesale firm power service supplied through one meter at one point of delivery.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate—Demand Charge: $7.85 kilowatt of billing demand.

Energy Charge: 18.46 mills per kilowatthour of use.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Adjustments—

For transformer losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For power factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

[FR Doc. 87-8098 Filed 4-9-87; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3184-6]

Risk Assessment Forum Report on Dioxin Toxicity Eqivalency Factors; Availability

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of Risk Assessment Forum report.

SUMMARY: This notice announces the availability of an EPA Risk Assessment Forum report entitled "*Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and Dibenzofurans (CDDs and CDFs).*" The report provides interim guidance for Agency scientists on assessing risks for dioxins other than 2,3,7,8-TCDD.

ADDRESSES: To obtain a copy of the document, interested parties should contact the ORD Publications Center, CERI, U.S. Environmental Protection Agency (EPA), 26 W. St. Clair St., Cincinnati, OH 45268, (513) 569-7562 (FTS: 684-7562).

FOR FURTHER INFORMATION CONTACT: Ms. Linda Tuxen, Technical Liaison, Risk Assessment Forum, U.S. Environmental Protection Agency, 401 M Street SW. Washington, DC 20460, or call (202) 475-6743.

SUPPLEMENTARY INFORMATION: Since the 1970s, the Agency has faced many environmental issues involving 2,3,7,8-tetrachlorodibenzo-p-dioxim (2,2,7,8-TCDD), a chemical that has several significant toxic effects at very low doses in animals. Fewer toxic effects have been definitively demonstrated in humans. EPA has utilized this relatively extensive data base to generate risk assessments on 2,3,7,8-TCDD in herbicides, soil, water, fish, and combustion emissions.

Many other members of "the extended dioxin family"—consisting of 75 CDDs and 135 CDFs—are also present in the environment. While there is a dearth of specific toxicological data by which to judge the human health and environmental significance of these compounds, there is concern among scientists that many of these closely related chemicals may have toxicological properties similar to those of 2,3,7,8-TCDD, but possibly expressed at higher doses.

The Forum report adopts the use of weighting factors (TCDD "Toxicity Equivalency Factors" or TEFs) for interpreting the human health significance of mixtures of CDDs and CDFs. The use of TEFs allows the Agency to estimate quantitatively the toxicity of CDD/CDF mixtures in terms of "2,3,7,8-TCDD equivalents," which, in turn, can be evaluated through existing procedures for assessing the health significance of exposure to 2,3,7,8-TCDD. This approach is consistent with principles set forth in EPA's risk assessment guidelines for chemical mixtures issued on September 24, 1986 (51 FR 34014).

The TEFs are subject to change as new data becomes available. The TEF approach thus constitutes an *interim* science policy based on a rational, but not definitive, evaluation of the available scientific data. The Forum report recommends that EPA sponsor additional research that would allow the Agency to adopt more definitive approaches as new data are developed.

The report incorporates suggestions from external peer reviewers and a special panel of EPA's Science Advisory Board.

Dated: April 1, 1987.

Vaun A. Newill,

Assistant Administrator for Research and Development.

[FR Doc. 87-8035 Filed 4-9-87; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3184-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075, EPA.

Availability of Environmental Impact Statements Filed March 30, 1987 through April 03, 1987.

EIS No. 870111, DSuppl, FAA, NH, Lebanon Municipal Airport Runway 18 Extension, Outer Marker with Compass Locator Facility Installation, Grafton County, Due: May 26, 1987, Contact: Kermit Wiesselguist (617) 273-7204.

EIS No. 870112, Final, EPA, OH, Andrew W. Breidenbach Environmental Research Center, Full Containment Facility, Hamilton County, Due: May 11, 1987, Contact: Russell Kulp: (202) 382-2172.

EIS No. 870113, Draft, MMS, HI, PAC, Hawaiian Archipelago and Johnston Island Exclusive Economic Zones, Marine Mineral Sale, Leasing, Due: June 25, 1987, Contact: Robert Paul (213) 514-6148.

EIS No. 870114, Final, FHW, VA, VA-600 Improvement, VA-603 to VA-762, Smyth County, Due: May 11, 1987, Contact: James Tumlin (804) 771-2371.

EIS No. 870115, Draft, COD, OK, TX, Denison Dam—Lake Texoma Reevaluation Plan, Water Resource Problems and Needs, Red River, Due: May 26, 1987, Contact: Paul Mace (918) 581-7857.

EIS No. 870116, Final, BLM, AZ, Phoenix Resource Area, Wilderness Study Areas, Designation, Due: May 11, 1987, Contact: Bill Carter (602) 863-4464.

EIS No. 870117, Final, USN, CA, Target Ranges R-2510 (West Mesa) and R-2512 (East Mesa), Range Safety Zones, Land Acquisition and Management on Non-Federal Lands, Naval Air Facility El Centro, Imperial County, Due: May 11, 1987, Contact: Dana Sakamoto (415) 877-7590.

EIS No. 870118, Final, FHW, CO, CO-7/ Forest Highway 26 Reconstruction, Meeker Park to US 36 in Estes Park, Boulder and Larimer Counties, Due: May 11, 1987, Contact: R.E. Arensdorf (303) 236-3468.

EIS No. 870119, Final, BOP, GA, Jesup Federal Correactional Institution Complex, Construction and Operation, Wayne County, Due: May 11, 1987, Contact: Loy Hayes (202) 272-6535.

EIS No. 870120, Draft, NPS, CA, Decker Canyon Management and Development Concept Plan, Santa Monica Mountains National Recreation Area, Los Angeles and Ventura Counties, Due: June 8, 1987, Contact: Nancy Ehorn (818) 888-3440.

Amended Notice

EIS No. 870051, Draft, USN, CA, San Francisco Bay Battleship Battlegroup and Cruiser Destroyer Group Homeporting, Construction and Operation, San Francisco County, Due: April 14, 1987, Published FR 2-13-87—Review period extended.

Dated: April 7, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-8079 Filed 4-9-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3184-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 23, 1987 through March 27, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-BLM-J70011-ND, Rating EC2, N. Dakota Resource Mgmt. Plan, ND. Summary: EPA recommends that the final EIS specifically state how the consultation process with State and federal wildlife management agencies regarding mitigation aspects of oil and gas leasing, coal leasing, and surface land management will occur. The EIS should augment its description of grassland conditions, and analyze compliance with the State ambient and emission standards for hydrogen sulfide. North Dakota public lands contain very few riparian areas, therefore, these areas could be selected as demonstration areas, consistent with the BLM policy guidance on riparian lands.

ERP No. D-CDB-C89027-NY, Rating EC2, Metrotech Site Development Project, Construction and/or Rehabilitation, UDAG, NY. Summary: EPA's review of the draft EIS highlighted potential impacts to air quality, sewage treatment facilities, municipal water supply, and cultural resources that may result from implementing the proposed project. Accordingly, EPA requested that additional information be presented in the final EIS to address these concerns.

ERP No. DB-FHW-A41947-HI, Rating EC2, Interstate H-3 Freeway Construction, Halawa Interchange to Halekou Interchange, Reevaluation, 404 Permit, HI. Summary: EPA expressed concerns about possible project impacts to ground water quality. EPA requested additional analysis regarding the utility of the basal aquifer and potential impacts to the aquifer from roadway runoff and spills. EPA noted that it proposes to make a determination that the Honolulu County area has an aquifer that is a sole or principal source of drinking water, which the H-3 highway project could adversely impact. EPA requested that the "sole source" issue be addressed.

ERP No. D-FHW-K40158-CA, Rating EC2, I-5 and Santa Ana Freeway Widening and Interchange Reconstruction, CA-22/57 Interchange to CA-55, 404 Permit, CA. Summary: EPA expressed environmental concerns because the draft EIS did not: (1) Adequately describe the serious air quality problems in the project area; (2) Fully describe the assumptions used in the High-Occupancy Vehicle lanes analysis; (3) Adequately address conformity with the State Implementation Plan; and (4) Discuss the cumulative air quality impacts from adjoining I-5 highway projects. EPA requested that the final EIS address these four issues more thoroughly.

ERP No. D-SCS-D36105-WV, Rating LO, Howard Creek Watershed Flood Control and Watershed Protection, WV. Summary: EPA had no objections to the development and implementation of the project, as proposed.

Final EISs

ERP No. F-BLM-K03016-CA, San Joaquin Valley Pipeline and Ancillary Facilities Project, Construction, 404 Permit, Right-of-Way Grant, Weir Station to Martinez Oil Refinery, CA. Summary: EPA expressed continuing concerns about the pipeline project's water quality impacts. EPA requested that the California State Lands Commission and BLM continue to coordinate with the Army Corps of Engineers (COE) and EPA to ensure that the COE's nationwide Clean Water Act (CWA) Sect. 404 permit conditions are met during the pipeline construction phase. EPA also requested that it be kept informed of the progress in carrying out mitigation measures adopted in the BLM's Record of Decision.

ERP No. F2-BLM-K65064-CA, Alturas Resource Area, Pit River Canyon and Tule Mtn. Wilderness Study Areas, Wilderness Recommendations, Designation or Non-Designation, CA. Summary: EPA had no comments to offer on the final EIS.

ERP No. F-COE-K36088-CA, Coyote Creek Flood Control Project, Facilities Construction, Sections 10 and 404 Permits, CA. Summary: EPA's review indicated that the final EIS adequately addressed the project's environmental impact. In order to ensure the maintenance of water quality and protected beneficial uses, EPA recommended that commitments to mitigation, channel maintenance requirements, and design modifications be made prior to the issuance of the CWA Section 404 dredge-and-fill permit.

ERP No. FS-SCS-G34037-LA, Bell City Watershed Protection and Flood Control Plan, Additional Channel Work, LA. Summary: EPA has no objections to the proposed action as described.

Dated: April 7, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87-8080 Filed 4-9-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-00080; FRL-3184-7]

Biotechnology Science Advisory Committee; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee. The meeting will be open to the public. The Committee will discuss the definition of environmental release, the definition of pathogen, and greenhouse containment guidelines.

DATE: The meeting will be held on Monday, April 27, starting at 9 a.m. and ending at approximately 5:30 p.m.

ADDRESS: The meeting will be held at: The Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Environmental Protection Agency, The

TSCA Assistance Office, Office of Pesticides and Toxic Substances (TS-799), 401 M St., SW., Washington, DC 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The TSCA Assistance Office will provide rosters of the committee members and additional information, upon request after April 10, 1987. A summary of the meeting will be available from that office at a later date.

Dated: April 8, 1987.

Victor J. Kimm,

Deputy Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-8147 Filed 4-9-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-586]

First Federal Savings and Loan Association of Canton, Canton, OH; Final Action Approval of Conversion Application

Dated: April 2, 1987.

Notice is hereby given that on March 6, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of Canton, Canton, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium II, 221 E. 4th Street, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-8071 Filed 4-9-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-589]

Gateway Federal Savings & Loan Association, Cincinnati, OH; Final Action Approval of Conversion Application

Dated: April 2, 1987.

Notice is hereby given that on March 31, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Gateway Federal Savings and Loan Association, Cincinnati, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Cincinnati, Post Office Box 598, Cincinnati, Ohio 45201.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-8072 Filed 4-9-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-588]

Peoples Savings Bank, F.S.B., Monroe, MI; Final Action Approval of Conversion Application

Dated: April 2, 1987.

Notice is hereby given that on March 27, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Peoples Savings Bank, F.S.B., Monroe, Michigan for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-8070 Filed 4-9-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-587]

St. Paul Federal Bank for Savings, Chicago, IL; Final Action Approval of Conversion Application

Dated: April 2, 1987.

Notice is hereby given that on March 27, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of St. Paul Federal Bank for Savings, Chicago, Illinois, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-8069 Filed 4-9-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-590]

Washington Federal Savings Bank, Hillsboro, OR; Final Action Approval of Conversion Application

Dated: April 2, 1987.

Notice is hereby given that on March 27, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Washington Federal Savings Bank, Hillsboro, Oregon for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101-1693.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 87-8073 Filed 4-9-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Gerald C. Meyers et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 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 Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Gerald C. Meyers,* Riverside, Illinois; to acquire 11.20 percent of the voting shares of Valley Banc Services Corp., Antioch, Illinois, and thereby indirectly acquire State Bank of Hinkley, Hinkley, Illinois, and State of Bank of Osco, Osco, Illinois.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dr. F.A. Barnett,* Paris, Missouri; to acquire 18.76 percent of the voting shares of Paris Bancshares, Inc., Paris, Missouri, and thereby indirectly acquire Paris National Bank, Paris, Missouri.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-8006 Filed 4-9-87; 8:45 am]

BILLING CODE 6210-01-M

Peoples Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 2, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *People Bancshares, Inc.,* Lewisville, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank and Loan Company, Lewisville, Arkansas.

Board of Governors of the Federal Reserve System, April 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-8007 Filed 4-9-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on March 27, 1987.

Public Health Service (PHS)

(Call Reports Clearance Officer on 202-245-2100 for copies of Package)

Food and Drug Administration

Subject: Application for Commission—Extension—(0910-0010)

Respondents: Individuals or households

Subject: Investigational New Drug Application—21 CFR Part 312—Reinstatement—(0910-0162)

Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

Subject: Current Good Manufacturing Practices for Finished Pharmaceuticals—21 CFR Part 211—Reinstatement—(0910-0139)

Respondents: Businesses or other for-profit; Small businesses or organizations

National Institutes of Health

Subject: Survey of Physician's Practice Behaviors Related to the Prevention of Lung Disease—New—

Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Health Resources Services Administration

Subject: HRSA Competing Training Grant Application—Revision—(0915-0060).

Respondents: Non-profit institutions

OMB Desk Officer: Shannah Koss

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

Subject: Public Assistant Agency Information Request—Extension—(0960-0095)

Respondnets: State or local governments; Non-profit institutions.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)

Subject: Home Health Agency Cost Report—Extension—(0938-0022)—HCFA-1728-86

Respondents: Businesses or other for-profit; Non-profit institutions

Subject: Questionnaire Concerning Forged Check—Extension—(0938-0205)—HCFA-451

Respondents: Individuals or households

Subject: Third Party Premium Billing Request—Extension—(0938-0041)—HCFA-2384

Respondents: Individuals or households

OMB Desk Officer: Allison Herron.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS/FDA: 202-245-2100

HCFA: 301-594-8650

SSA: 301-594-4706

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: (name of OMB Desk Officer).

Dated: April 7, 1987

James F. Trickett,

Director, Office of Administrative and Management Services.

[FR Doc. 87-8022 Filed 4-9-87; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 77N-0240; DESI 12836]

Dipyridamole; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug applications (NDA's) for certain single-entity coronary vasodilators containing dipyridamole insofar as they provide for the indication lacking substantial evidence of effectiveness. FDA offered an opportunity for a hearing, but no hearing was requested for these products.

EFFECTIVE DATE: May 11, 1987.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 12836 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Judy O'Neal, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 2857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on January 15, 1987 (52 FR 1663), the Acting Deputy Director of the Center for Drugs and Biologics revoked a temporary exemption for drug products containing dipyridamole. The exemption permitted these products to remain on the market beyond the time limits scheduled for implementation of the Drug Efficacy Study. The notice also offered an opportunity to request a hearing on the proposal to withdraw approval of the NDA's for these products insofar as they provide for the indication, long term therapy of chronic angina pectoris. The proposal was based on the conclusion that the data submitted in support of this indication did not constitute substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.126. In a notice published in the **Federal Register** of February 23, 1987 (52 FR 5501), the January 15, 1987 notice was amended by adding 16 conditionally approved applications.

As stated in the notice of opportunity for hearing, the failure to request a hearing constitutes an election not to make use of the opportunity for a hearing. Accordingly, this notice withdraws approval, insofar as they pertain to the indication, long term therapy of chronic angina pectoris, of the following new drug applications that were listed in the January 15, 1987 notice and for which no hearing was requested:

1. ANDA 12-836; Persantine Tablets containing 25 milligrams (mg) of dipyridamole per tablet; Boehringer Ingelheim Pharmaceuticals, Inc., 90 East Ridge, Ridgefield, CT 06877.

2. ANDA 86-758; Persantine Tablets containing 75 mg dipyridamole per tablet; Boehringer Ingelheim.

3. ANDA 86-759; Persantine Tablets containing 50 mg of dipyridamole per tablet; Boehringer Ingelheim.

4. ANDA 86-981; Dipyridamole Tablets containing 25 mg of the drug per tablet; Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Capiague, NY 11726.

5. ANDA 87-664; Dipyridamole Tablets containing 75 mg to the drug per tablet; Ascot Hospital Pharmaceuticals, Inc. 8050 North Lawdale Ave., Skokie, IL 60076.

6. ANDA 87-676; Dipyridamole Tablets containing 25 mg of the drug per tablet; Mylan Pharmaceuticals, Inc., P. O. Box 4293, Morgantown, WV 26505 (withdrew hearing requests).

7. ANDA 87-688; Dipyridamole Tablets containing 25 mg of the drug per tablet; Ascot.

8. ANDA 87-710; Dipyridamole Tablets containing 25 mg of the drug per tablet; Vargard Laboratories,101-107 Sampson St., Glasgrow, KY 42141

9. ANDA 87-829; Persantine-50 Tablets containing 50 mg dipyridamole per tablet; Boehringer Ingelheim.

10. ANDA 87-832; Persantine-75 Tablets containing 75 mg dipyridamole per tablet; Boehringer Ingelheim.

11. ANDA 87-882; Dipyridamole Tablets containing 50 mg of the drug per tablet; Mylan Pharmaceuticals (withdrew hearing request).

12. ANDA 87-883; Dipyridamole Tablets containing 75 mg of the drug per tablet; Mylan Pharmaceuticals (withdrew hearing request).

13. ANDA 88-263; Dipyridamole Tablets containing 50 mg of the drug per tablet; Vangard Laboratories.

14. ANDA 88-264; Dipyridamole Tablets containing 75 mg of the drug per tablet; Vangard Laboratories.

15. ANDA 88-434; Dipyridamole Tablets containing 50 mg of the drug per tablet; Ascot.

16. ANDA 88-512; Dipyridamole Tablets containing 25 mg of the drug per tablet; West-Ward, Inc., 465 Industrial Way West, Eatontown, NJ 07724.

17. ANDA 88-513; Dipyridamole Tablets containing 50 mg of the drug per tablet; West-Ward, Inc.

18. ANDA 88-624; Dipyridamole Tablets containing 75 mg of the drug per tablet; West-Ward, Inc

Any drug product that is identical, related, or similar to these products and is not the subject of an approved new drug application, a pending hearing request, or the amendment published in the **Federal Register** on February 23, 1987, is covered by the new drug applications listed above and is subject to this notice (21 CFR 310.6). Any person who wishes to deterrmine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above). This withdrawal of approval does not apply to the products for which a hearing was requested. The requests are now under review and will be subject of a future **Federal Register** notice.

The Acting Director of the Center for Drugs and Biologics finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the products named above will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of the applications listed above and all their amendments and supplements insofar as they pertain to the indication, long term therapy of chronic angina petoris, is withdrawn effective May 11, 1987. Shipment in interstate commerce of these products or any identical, related, or similar product that is not the subject of an approved new drug application or a pending hearing request will then be unlawful.

This notice is issued under the Federal Food, Drug and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authoirty delegated to the Acting Director of the Center for Drugs and Biologics (21 CFR 5.82)

Dated: April 1, 1987.

Gerald F. Meyer,

Acting Deputy, Center for Drugs and Biologics

[FR Doc. 87-8003 Filed 4-9-87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1987:

Name: National Advisory Council on Nurse Training

Date and Time: May 11–13, 1987, 9:00 a.m.

Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

Open on May 12, 9:00 a.m.—12:30 p.m.

Closed for remainder of meeting.

Purpose: The Council advisers the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Admendments of 1985 (Pub. L. 99–92). The Council also performs final review of grant applications for Federal assistance, and makes recommendations to the Administrator, HRSA.

Agenda: Agenda items for the open portion of the meeting will cover announcements; consideration of minutes of the previous meeting; reports by the Director, Bureau of Health Professions, the Director, Division of Nursing, and staff reports. The meeting will be closed to the public on May 12, at 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advanced Nurse Training Education applications, Nurse Practitioner/Nurse Midwifery, and Special Project Grants applications. The closing is in accordance with the provisions set forth in section 552b(c)(b), Title 5, U.S. Code and the Determination by the Administrator, Health Resources and Services Administration, pursuant to section 10(d) of Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should write to or contact Dr. Mary S. Hill, Bureau of Health Professions, Health Resources and Services Administration, Room 5C–04, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Agenda items are subject to change as priorities dictate.

Dated: March 26, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87–7993 Filed 4–9–87; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Health Resources and Services Administration; Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of March 16, 1987 (52 FR 9542) by the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, with authority to redelegate, all the authority delegated, excluding the authority under section 4229(b), to the Assistant Secretary for Health under the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 concerning the development and implementation of a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level and other purposes, excluding the authories to issue regulations, and submit reports to Congress.

This delegation became effective on April 2, 1987.

Dated: April 2, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–7934 Filed 4–9–87; 8:45 am]

BILLING CODE 4160–17–M

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHS) (42 FR 61318, December 2, 1977, as amended most recently at 52 FR 9219, March 23, 1987) is amended to reflect: (1) Establishment of an Office of the Surgeon General; (2) transfer of functions of the Division of Commissioned Personnel Operations (CPOD), Office of Personnel Management, Office of Management, into the new Office of the Surgeon General; and (3) revision of the Office of Personnel Management statement by eliminating the CPOD functions.

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, Section HA–10, Organization, add to the list of organizations item 18. Office of the Surgeon General (HAN).

Under Section HA–20, Functions, after the title and statement for the Office of Emergency Preparedness (HAP), add the following title and statement:

Office of the Surgeon General (HAN). Under the direction of the Surgeon General the Office provides staff support to the Surgeon General for (1) release of reports of the Surgeon General such as: "Smoking and Health" and "Healthy People" under authority of the Secretary of Health and Human Services (15 U.S.C. 1337); (2) management of the personnel system of the Commissioned Corps, under the aegis of the ASH, including recruitment and retention of commissioned officers; (3) activities relating to membership on the Board of Regents of the Uniformed Services University of the Health Sciences and as principal health official for PHS on all matters related to policies affecting PHS faculty and students (10 U.S.C 2113(a)(3); (4) activities related to responsibilities on other boards, including the (a) National Library of Medicine; (b) Armed Forces Institute of Pathology (AFIP); (c) Gorgas Memorial Institute on Tropical Medicine; (d) AMA House of Delegates; (e) Executive Committee, Association of Military Surgeons of the United States.

The Office provides support to the Surgeon General (5) in issuing warnings to the public on health hazards (6) for review of the particulars of Department of Defense (DoD) plans for transportation, open testing and disposal of lethal chemicals and biological agents and in recommending precautions necessary to protect the public health and safety binding on the Secretary, DoD, which can only be overridden by the President (P.L. 91–441) (50 U.S.C. 15–12 (2,3)); (7) in serving as the focal point for communication with professional societies to receive, solicit and channel concerns regarding health policy; and (8) in representing PHS at national and international health and professional meetings to interpret PHS philosophy, policies, organizational responsibilities and programs.

Division of Commissioned Personnel (HAN2). The Division supports the Surgeon General to (1) administer a comprehensive personnel management program for the Public Health Service

Commissioned Corps; (2) perform all operating functions associated with the Commissioned Corps personnel system; (3) provide advice and counsel concerning rights and benefits to members of the Corps; (4) provide guidance and assistance to the OASH and the PHS agencies concerning personnel management of the Commissioned Corps; and (5) serve as the central repository for all records reflecting the service and status of members of the Corps.

Under Section HA–20, Functions, Office of Management (HAU), after the title Office of Personnel Management (HAU3), delete reference to . . . "(1) Uniform Service, PHS Commissioned Officers" and change the statement reflecting personnel management systems to read "provides leadership and direction in the planning and implementation of comprehensive personnel management system for PHS Federal career, career-conditional and other employees; . . .".

Delegations of Authority

Section H–30, Delegation of Authority. Notice is hereby given that pursuant to these organization changes within the Office of the Assistant for Health, the following delegation actions were taken:

Pursuant to the delegations of authorities vested in the Assistant Secretary for Health by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Surgeon General the authority to:

1. Appoint individuals in the Reserve Corps of the PHS Commissioned Corps pursuant to 42 U.S.C. 204;

2. Terminate commissions of Reserve Corps Officers without the consent of the officers concerned pursuant to 42 U.S.C. 209(a)(2);

3. Make or terminate temporary promotions of regular and Reserve Corps officers pursuant to 42 U.S.C. 211(a), (k), and (l); and

4. Prescribe titles, appropriate to the several grades, for PHS commissioned officers, other than medical officers, pursuant to 42 U.S.C. 207(b).

This authority may be exercised by and redelegated only to officials of the Public Health Service who are required to be appointed by the President, by and with the advice and consent of the Senate.

The Assistant Secretary for Health has delegated to the Surgeon General, with authority to redelegate, all authorities vested in the Assistant Secretary for Health which are necessary to administer the PHS Commissioned Corps Personnel System, including, but not limited to authorities contained in Titles 5, 10, 37 and 42 of the United States Code; regulations issued pursuant thereto; and Reorganization Plan 3 of 1966, but excluding the authority to:

1. Create special temporary positions in the grade of Assistant Surgeon General;

2. Determine the numerical requirements of the Commissioned Corps; (After the numerical requirements of the Commissioned Corps have been established, the requirements in each grade in each category of the Commissioned Corps will be established by the Assistant Secretary for Health or his designee.)

3. Waive entrance qualificaitons for original appointment to the Reserve Corps in time of war or national emergency;

4. Investigate commissioned officers in the interests of the national security;

5. Approve personnel policies which apply both to the Commissioned Corps and Civil Service personnel Systems;

6. Administer the Board for Correction of PHS Commissioned Corps Records (10 U.S.C. 1552); and

7. Prescribe regulations pertaining to the PHS Commissioned Corps.

All delegations heretofore issued by the Assistant Secretary for Health to the Director, Office of Management, pertaining to the PHS Commissioned Corps Personnel System, except the authority under 10 U.S.C. 1552 concerning the Board for Correction of PHS Commissioned Corps Records have been revoked. However, redelegations of these authorities by the Director, Office of Management, may continue until new delegations are made, provided they are consistent with the delegation herein to the Surgeon General.

This delegation of authorities was effective on March 30, 1987.

Dated: March 30, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–7935 Filed 4–9–87; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits; Sea World, Inc., et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–716347

Applicant: Sea World, Inc., San Diego, CA.

In 52 FR 8984, March 20, 1987, the Notice of Receipt for this application stated the applicant of PRT–716347 was Sea World of Florida. This is in error, as the applicant should read Sea World, Inc., San Diego, CA. The public comment period will not be extended and will terminate April 20, 1987.

PRT–717177

Applicant: San Francisco Zoological Garden, San Francisco, CA.

The applicant requests a permit to import one male and one female great Indian one-horned rhinoceros (*Rhinoceros unicornis*) to be taken from the wild in the Royal Chitwan National Park, Nepal for the purpose of genetic enrichment for the captive breeding program and for conservation education. These animals are to be included in the American Association of Zoological Parks and Aquariums' Species Survival Plan program for great Indian one-horned rhinoceros.

PRT–716947

Applicant: Frank Buck Bring 'Em Back Alive, Inc., Sarasota, FL.

The applicant requests a permit to export and reimport six female Asian elephants (*Elephas maximum*) for the purpose of enhancement of survival through public display and conservation education.

PRT–716941

Applicant: Robert F. Fortier, Ripley, MS.

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

PRT–715414

Applicant: Frank Preston, Phillipsburg, NJ.

The applicant requests a permit to import a trophy of a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by Phil van der Merwe, Skietkuil, Hutchinson, Cape Province, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance

of this herd and thereby enhance the likelihood of the survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: April 7, 1987.

R.K. Robinson,

Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 87-8104 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Pueblo of Santa Ana, NM.; Determination

March 25, 1987.

Pursuant to section 6(b)(2) of the Act of October 28, 1986, Pub. L. 99-575, 100 Stat. 3243, the determination is hereby made that no consents to easements are required for private easements of access as described in section 6(b)(1). The Pueblo of Santa Ana, New Mexico, and the Secretary of the Interior received applications for private easements before the date specified in section (6)(b)(1)(B).

Further, the provisions of section 1 (a) and (b) shall become effective on the day on which this Notice is published in the **Federal Register**, as provided in section 6(b)(1).

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-7992 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[FES87-15]

Availability of Phoenix Final Wilderness Environmental Impact Statement

AGENCY: Bureau of Land Management.

ACTION: Notice of availability of Phoenix final wilderness environment impact statement.

SUMMARY: The Final Phoenix Wilderness Environmental Impact Statesment assesses the environmental consequences of managing six wilderness study areas as wilderness or nonwilderness. The alternatives assessed include:

(1) An "All Wilderness Alternative" for each wilderness study area and

(2) A "No Wilderness Alternative" for each wilderness study area.

The names of the wilderness study areas, their total acreages, and the proposed actions for each are as follows:

Mount Wilson—24,821 acres (all suitable)
Hells Canyon—9,379 acres (all nonsuitable)
White Canyon—6,938 acres (all nonsuitable)
Picacho Mountains—6,400 acres (all nonsuitable)
Coyote Mountains—5,080 acres (all suitable)
Baboquivari Peak—2,065 acres (all suitable).

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior and the President to Congress. The final decision on wilderness designation rests with Congress.

FOR FURTHER INFORMATION CONTACT: Henri R. Bisson, Acting District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, Telephone (602) 863-4464.

SUPPLEMENTARY INFORMATION: Copies of the environmental impact statement may be obtained from the District Manager, Phoenix District, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Copies are also available for inspection at the following locations.

Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240
Arizona State Office, Bureau of Land Management, Public Room, 3rd Floor, 3707 North 7th Street, Phoenix, Arizona 85011
Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401

Dated: April 2, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87-7690 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-32-M

[U-1361, U-18619, and U-42919]

Utah; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 1,362.47-acre withdrawal for the Jensen Unit, Ute Indian Unit and Vernal Unit, Central Utah Project, continue until December 31, 2090. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 324 South State, Suite 301, Salt Lake City, UT 8411.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, Utah State Office, (801) 524-3074.

The Bureau of Reclamation proposes that the existing land withdrawals made by Public Land Order No. 4385 of March 19, 1968, Public Land Order No. 5613 of February 7, 1977, and Secretarial Order of June 11, 1943, be partially continued until December 31, 2080, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located approximately 10 miles northeast of Vernal and aggregate 1,362.47 acres in Uintah County, Utah.

The purpose of the withdrawals is to protect the Red Flat Dam Reservoir and related facilities, part of the Jensen Unit; the Halfway Hollow Reservior, part of the Ute Indian Unit; and the Steinaker Dam, Reservoir and related facilities, part of the Vernal Unit. The withdrawals segregate the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

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 continuation may present their views in writing to the undersigned officer at the address specified 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: April 2, 1987.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-7974 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-DQ-M

[U-0146858]

Proposed Continuation of Withdrawal; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 1,471.99-acre withdrawal for the Upalco Unit, Central Utah Project, continue until December 31, 2010. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 324 South State, Suite 301, Salt Lake City, UT 84111.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, Utah State Office, (801) 524-3074.

The Bureau of Reclamation proposes that the existing land withdrawal made by Public Land Order No. 4192 of April 10, 1967, be continued until December 31, 2010, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located approximately 140 miles east of Salt Lake City, and aggregate 1,471.99 acres in Duchesne County, Utah.

The purpose of the withdrawal is to protect the Upalco Unit of the Central Utah Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of his notice, all persons who wish to submit comments suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the addressed specified 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 aand 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: April 2, 1987.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-7973 Filed 4-2-87; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Note of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3336, Block 35, South Timbalier 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 Leeville, Louisiana.

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: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

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, executive 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 OSC Region.

[FR Doc. 87-7989 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Development Operations Coordination; Conoco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc., Unit Operator of the West Delta—Grand Isle Federal Unit Agreement No. 14-08-001-2454, has submitted a DOCD describing the activities it proposes to conduct on the West Delta—Grand Isle Federal unit. 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 Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on March 24, 1987.

ADDRESSES: 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: Mr. Richard Towner; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development: Development and Unitization Section; Unitization Unit; Phone (504) 736-2641.

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. 87-7990 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Development Operations Coordination; 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 5423, Block 216, 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 April 1, 1987. Comments must be received on or before April 27, 1987, 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 3, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-7991 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Intent to Negotiate Concession Contract; Forever Living Products, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that ninety (90) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Forever Living Products, Inc. authorizing it to continue to provide food, beverage, merchandising, trailer village, marina and related facilities and services for the public at Lake Mead National Recreation Area, Nevada for a period of twenty five (25) years from January 1, 1988 through December 31, 2012.

The proposed contract requires a construction and improvement program which was previously described in the Environmental Impact Statement (September 11, 1986 FES-86-27) for the General Management Plan for Lake Mead National Recreation Area.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the nintieth (90th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 87-8045 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-70-M

Intent To Negotiate Concession Contract; Guest Services, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Regional Director of the Pacific Northwest Region of the National Park Service, proposes to negotiate a concession contract with Guest Services, Inc., authorizing it to continue to provide overnight accommodations, food and beverage facilities and services, merchandising facilities and services, automobile gasoline stations, camper supplies and services, and ski touring for the public at Mount Rainier National Park in the State of Washington. The contract will be for a period of twenty-five (25) years from January 1, 1987, through December 31, 2012, and is conditioned upon completion of an improvement program.

This proposed contract requires a construction and improvement program. The construction and improvement program required was previously addressed in the enviromental impact statement prepared for a master plan at Mount Rainier National Park and is in conformance with the Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA) (40 CFR Parts 1500 through 1508).

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1991, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the

renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should write to the Superintendent, Mount Rainier National Park, Tahoma Woods, Star Route, Ashford, Washington 98304 or call Mr. Phil Parker, Concession Manager, (206) 442-5193, for a copy of the Statement of Requirements describing the opportunity offered and including the application requirements.

Dated: December 9, 1986.

William J. Briggle,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 87-8078 Filed 4-9-87; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-376 (Preliminary)]

Certain Stainless Steel Butt-Weld Pipe Fittings from Japan

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-376 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of stainless steel butt-weld pipe and tube fittings, under 14 inches in inside diameter, provided for in item 610.89 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 18, 1987.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: April 3, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161. Information may also be obtained via electronic mail by assessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on April 2, 1987, by Flowline Corp., New Castle, PA., a U.S. producer of certain stainless steel butt-weld pipe fittings.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on April 27, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bruce Cates (202-523-0369) not later than April 24, 1987, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before April 30, 1987, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: April 7, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-8043 Filed 4-9-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-No. 134X)]

The Baltimore and Ohio Railroad Co.; Abandonment Exemption in Ross County, OH; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 13.36-mile line of railroad between milepost 74.45 near Thrifton and milepost 87.81 near Musselman, in Ross County, OH.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.[1]

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective May 10, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by April 20, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 30, 1987, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: March 30, 1987.

[1] Notice was filed 2 days after applicant served notice on the appropriate state agency. To comply with the 10-day prior notice requirement, the Commission's acceptance of the notice was delayed by 8 days.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-8036 Filed 4-9-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-286 (Sub-No. 1X)]

The New York, Susquehanna and Western Railway Corp.; Abandonment Exemption in Bergen County, NJ; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its .87-mile line of railroad between valuation stations 941+14.9 and 987+50, in Garfield, Bergen County, NJ.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complaintant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective May 10, 1987, (unless stayed pending reconsideration). Petitions to stay must be filed by April 20, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by April 30, 1987, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: William P. Quinn, 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: April 6, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-8037 Filed 4-9-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Bureau Justice Statistics

Availability of Funds; National Drug Enforcement Data Clearinghouse Applications for Awards

AGENCY: Department of Justice (DOJ), Bureau of Justice Statistics (BJS).

ACTION: Notice.

SUMMARY: This notice announces the availability of funds (up to $1.5 million) to develop and operate a National Drug Enforcement Data Clearinghouse during a 24-month period and solicits applications for an assistance award. BJS will make one award of a cooperative agreement in response to this solicitation.

DATE: Proposals must be postmarked no later than June 24, 1987.

Note.—Applications are invited from public agencies and private non-for-profit organizations only. Participation by profit-making organizations is permissible only as contractors providing goods or services required by eligible applicants.

ADDRESS: Application forms and/or additional copies of this notice are available upon request at the following location: Bureau of Justice Statistics (BJS), 633 Indiana Avenue, NW., Room 1142, Washington, DC 20531, Telephone No. (202) 724-7770.

FOR FURTHER INFORMATION CONTACT: Sue A. Lindgren, Associate Deputy Director, BJS, at 633 Indiana Avenue, NW., Washington, DC 20531; telephone (202) 724-7759.

SUPPLEMENTARY INFORMATION:

National Drug Data Enforcement Clearinghouse: Outline of Solicitation

I. Introduction

Subtitle K, section 1302, of the Anti-Drug Abuse Act of 1986 (entitled the "State and Local Law Enforcement Assistance Act of 1986") authorizes the U.S. Department of Justice, Bureau of Justice Assistance (BJA) to make discretionary grants to States, for the use of State and local governments, for the purpose of enforcing State and local laws similar to those established in the Controlled Substances Act (21 U.S.C. 801 *et. seq.*) and to provide for:

A. Apprehension

Provide additional personnel, equipment, facilities, personnel training, and supplies for more widespread apprehension of persons who violate State and local laws relating to the production, possession, and transfer of controlled substances and to pay operating expenses (including the purchase of evidence and information) incurred as a result of apprehending such persons.

B. Prosecution

Provide additional personnel, equipment, facilities, (including upgraded and additional law enforcement crime laboratories), personnel training, and supplies for more widespread prosecution of persons accused of violating such State and local laws and to pay operating expenses in connection with such prosecution.

C. Adjudication

Provide additional personnel (including judges), equipment, personnel training, and supplies for more widespread adjudication of cases involving persons accused of violating such State and local laws, to pay operating expenses in connection with such adjudication, and to provide quickly, temporary facilities in which to conduct adjudications of such cases.

D. Detention and rehabilitation

Provide additional public correctional resources for the detention of persons convicted of violating State and local laws relating to the production, possession, or transfer of controlled substances and to establish and improve treatment and rehabilitative counseling provided to drug dependent persons convicted of violating State and local laws.

E. Eradication

Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

F. Treatment

Provide programs which identify and meet the needs of drug-dependent offenders.

G. Major drug offenders

Conduct demonstration programs, in conjunction with local law enforcement officials, in areas in which there is a high incidence of drug abuse and drug trafficking to expedite the prosecution of major drug offenders by providing additional resources, such as investigators and prosecutors, to identify major drug offenders and move these offenders expeditiously through the judicial system.

Section 1309 of the Act gives BJA the authority to provide discretionary grants to public agencies and private non-profit organizations to assit in the achievement of the purposes enumerated in section 1302. In addition, section 1303(1) of the Act requires that, in order to request grants under the Act, each State must submit to BJA "a statewide strategy for the enforcement of State and local laws relating to the production, possession, and transfer of controlled substances." Finally, section 1306(a)(1) of the Act indicates that each State which receives such a grant must submit to BJA, for each year in which funds are received, "an assessment of the impact of such activities on meeting the needs identified in the State strategy."

To implement these provisions of the Act, BJA announced a Narcotics Control Discretionary Grant Program in the **Federal Register** of March 19, 1987 (Vol. 52, No. 53, pp. 8661–8676). As part of this program, it was announced in the same **Federal Register** (p. 8666) that there would be a BJS Drug Enforcement Data Clearinghouse.

BJA is authorized to transfer funds to BJS for such a purpose by section 807(c) of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Justice Assistance Act of 1984.

Section 509 of the Anti-Drug Abuse Act of 1986 authorizes the U.S. Department of Health and Human Services (HHS), through its Alcohol, Drug Abuse and Mental Health Administration (ADAMHA), to establish a clearinghouse to:

- Disseminate relevant publications from HHS and the Department of Education
- Disseminate information on health effects of alcohol and drug abuse
- Collect and disseminate information concerning successful alcohol and drug abuse education and privention curricula, and
- Collect and disseminate information on school-based alcohol and drug abuse education and prevention programs.

ADAMHA Intends to establish a National Clearinghouse for Alcohol and Drug Information (NCADI) in HHS as soon as possible through interagency agreements with the Department of Education. ADAMHA plans to issue an RFP in May, 1987, for a contract to develop and operate NCADI. For more information on the ADAMHA clearinghouse, contact Robert W. Denniston, (301) 443–0373.

In order to enable States, localities and the Federal government to have the appropriate quality and quantity of drug enforcement information available, including that required to build State strategies and to assess discretionary fund program impact, BJA will establish a National Drug Enforcement Data Clearinghouse (NDEDC) through an interagency agreement with the Bureau of Justice Statistics. The product of this clearinghouse is for the direct use of State and local law enforcement and criminal justice system practitioners, as well as others in need of information on drugs and the justice system. Work of this clearinghouse will be coordinated with the ADAMHA clearinghouse on health, education, prevention and alcohol abuse to minimize any duplication; the NDEDC is not authorized to perform functions in any of these areas other than the normal coordination requirements. The ADAMHA clearinghouse includes a much greater level of outreach and material development than the NDEDC.

The NDEDC project is to be funded as a cooperative agreement. The basis for the cooperative agreement is the substantial involvement that BJS has in the development of statistical information about drugs, crime and the criminal justice system and in providing data and information to:

(a) States to support the formulation of State strategies i.e., and

(b) State and local government law enforcement or criminal justice personnel who are directly responsible for apprehension, prosecution, adjudication, detention or treatment. The Bureau and the successful applicant will exercise joint general approval over the entire project and for all critical phases of the project. In addition, the Bureau's substantial involvement will include, but not be limited to, reviewing and commenting on drafts of the project deliverables specified in VI. F. of this solicitation, approving the final drafts prior to submission for publication, and approving in advance any changes in staffing key project positions.

II. Description of the Problem

Statistics related to drug abuse and the justice system are collected, stored, and retrieved in a wide variety of geographical locations and organizational elements. Persons in need of such statistics must now contact the various producers of these data, necessitating many telephone calls or letters to obtain the data. There are no central sources within the Federal Government where the potential user can obtain the needs data.

Types of justice system organizational elements include:

- Government jurisdictions and units (e.g., Federal, State, and local);
- Regional cooperative (e.g., Southeast Florida Drug Task Force);
- Research centers;
- Hot lines;
- Treatment centers.

Types of information of interest includes items such as:

- Prevalence and incidence of drug crimes;
- Relation of drugs to crime;
- Offender and victim characteristics (e.g., age, race, sex, income, education, drug use history, criminal history);
- Civil and Criminal justice system processing of drug offenders and of nondrug offenders with drug use histories;
- Illegal drug production and distribution sources;
- Narcotics control programs and strategies;
- Research studies in selected sites or for selected subgroups of drug users (e.g., prisoners, arrestees).

There is likely to be some duplication in the information produced by various sources. In addition, there are likely gaps in needed information. Further, there are probably flaws in the quality of some information. Finally, some information may be being withheld from public consumption for reasons related to crime intelligence.

III. Scope of Desired Work

The clearinghouse will be physically located outside of BJS. It could be anywhere in the United States.

The purposes of the clearinghouse include:

- Compile and standardize, where possible, narcotics control information on drugs and the justice system currently found in various research centers, the private sector, and jurisdictional elements (e.g., Federal, regional, State, and local).
- Improve access to statistical information about drugs and the justice system (e.g., drug abuse, drug law enforcement, treatment of users and offenders).
- Identify indicators that enable the justice system to monitor narcotics production, use and control.
- Make statistical information on drugs and the justice system available in a manner that is accessible, understandable and usable to technical and non-technical audiences, including policymakers and the general public.
- Refer requesters to other clearinghouses, such as the one maintained by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) of the Department of Health and Human Services (HHS), or to the data producers when such organizations or individuals can better serve the needs of the user.

To allow development of technical and non-technical reports or to meet specific data requirements, the clearinghouse must allow BJS and other authorized persons access to the information resources at all times.

IV. Dollar Amount and Duration

One cooperative agreement will be awarded. The project period for this effort will be 24 months. Section VI., below, outlines the major activities and tasks to be completed during the project period. Up to $1.5 million has been allocated for one project award this fiscal year, to cover a 24 month project.

The applicant may propose the establishment of a fee-for-service system for charging fees to users for selected services if such a method does not unnecessarily limit the availability of needed information. No charges would be made to State or local government users for routine services.

Applicants must propose a cost-effective budget that specifically relates the costs to the tasks to be undertaken in the first and second (12-month) phase of the project. Funding beyond the initial 24 month period will depend on availability of appropriated funds.

V. Eligibility Requirements

Pursuant to the limitations of section 1309 of the Anti-Drug Abuse Act of 1986, applications are invited from public agencies and private not-for-profit organizations only. Participation by profit-making organizations is permissible only as contractors providing goods or services required by eligible applicants.

Eligible organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Together, co-applicants must meet the eligibility requirements specified in A. and B. below.

The applicant must have experience in the following areas in order to be eligible for consideration:

A. Prior experience in using information and statistics on drugs and/or the justice system.

B. Demonstrated knowledge of information and statistical quality issues as they relate to existing sources and users of drug data in the justice system.

The applicant must have the management and financial capability to implement effectively a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Major Responsibilities of the Successful Applicant

The organization selected to conduct this project will be responsible for all aspects of the project, whether carried out directly or contracted to other organizations or individuals, and for the timely development of all tasks.

The successful applicant will have specific responsibility for developing a design and appropriate methods that are responsive to the goals and end products of the project as outlined in the solicitation. A project advisory board (including members from State and local government) will be appointed by the successful applicant, with the concurrence of BJS and will meet at least twice a year during the course of the project to review plans and progress on specific project tasks. In addition, because this project will be awarded as a cooperative agreement, BJS and the successful applicant will exercise joint general approval for the entire project and for all critical phases of the project.

In addition to submitting all financial and progress reports required by this agency, the grantee will be responsible for the following:

A. A revised implementation plan which incorporates the recommendations of BJS staff within 60 days of award.

B. An inventory and evaluation of existing data on drugs and the justice system (e.g., data bases, publications, studies) in Federal, State, and local government as well as the private sector. The evaluation must include an assessment of the—

1. Reliability and validity of data
2. Adequacy of the data for policy making
3. The systems that produce data for administrative and operational purposes.

C. Identification of justice system data gaps (e.g., no data, inadequate data, conflicting data, inaccurate data).

D. Establishment of a clearinghouse/reference function, including:

1. Archiving hard copy (books, printouts, etc.) and machine readable copy (as available) of drug related data

2. Toll-free 800 telephone number with—

- Access to one or more information specialists from 8:30 a.m. to 8:00 p.m. E.S.T.
- 24 hour access via answering machine

3. Remote computer terminal access with 24 hour access

4. Document pickup or distribution methods, including producing special computer tabulations of data available only on magnetic data tape

5. Advertising the availability of this clearinghouse/service

6. Resource staff qualified to respond to inquiries for statistical information, provide requested data, advise requester of data limitations, discuss possible interpretations of the data, and refer requester to other sources of drug information such as the clearinghouse maintained by the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) of the Department of Health and Human Services (HHS), as appropriate

7. Maintaining a continuing log of requests and responses, classifying requests by type of request, type of requester, intended use of the data and time required to fill the request.

E. Data tapes obtained and prepared under this award are to be:

1. Compatible with existing BJS datasets

2. Submitted to BJS in compliance with *A Style Manual for Machine-Readable Data Files and Their Documentation* (available from a BJS reading room).

F. Documents to be produced under this award in camera-ready copy are:

1. *Drug data telephone contacts,* to be modeled on *BJS Telephone Contacts '87* (available from a BJS reading room) and to include persons throughout the Government, private sector and elsewhere who are the best able to discuss the data available from various sources and the possible interpretations of these data.

2. *Drug data digest,* to be modeled after the BJS *Sourcebook of Criminal Justice Statistics* (available from a BJS reading room)

3. One or more BJS Special Reports, modeled after existing BJS Special Reports, to analyze in-depth topics mutually agreed upon by the successful applicant and BJS. (Topics do not need to be specified in the application).

G. A plan to facilitate coordination with any other drug abuse clearinghouse and other producers of statistical information on drugs, drug use, and drugs and crime (e.g., the planned National Clearinghouse on Alcohol and Drug Information of the Alcohol, Drug Abuse and Metal Health Administration (ADAMHA) in the U.S. Department of Health and Human Services).

H. Archiving State justice strategies submitted with application for drug block grant funds.

I. Proposing how to evaluate and develop comparative and longitudinal data bases of State justice strategy data. (The implementation of this plan would not occur during the first 12 months of this award.)

J. Proposing a method for evaluating and modifying the cooperative agreement and clearinghouse function, if needed.

Since this project will be awarded as a cooperative agreement, rather than a grant or contract, BJS will work closely with the recipient and will collaborate with the recipient in making major decisions throughout the course of the project including the final clearinghouse design, definitions of terminology, advisory board members, subjects of topical reports, etc. Any and all noncompetitive contracts in excess of $10,000 (with the exception of clerical support services) proposed by the successful applicant are subject to prior agency approval based on an adequate sole source justification. In addition, it is expected that the recipient will work cooperatively with other organizations in areas of mutual interest.

VII. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget, and a budget narrative.

In submitting collaborative applications between two or more organizations, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicants.

Proposal should address all of the following areas:

A. Project Abstract

B. Organizational Capability

In addition to the standard assurance provided in the Application for Federal Assistance, applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly.

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the eligibility criteria established in Section V. of this solicitation. Applicants must concisely describe how their organizational experience and capabilities will enable them to achieve the goals and objectives of the study.

C. Understanding Project Goals and Objectives

Applicants must discuss their understanding of the goals and objectives of the project and the nature of the problem. The applicants should outline the specific objectives that will be addressed and describe the related data plans. Applicants should also discuss the products and services that will be developed and their potential contribution to our knowledge about drugs and the justice system. Applicants should also show how this project will help State and local law enforcement and criminal justice agencies.

D. Implementation Plan

Applicants must present a detailed statement of work, including a design and methodology for implementing the requirements described in Section VI and describe how they will allocate the available resources to implement the strategy. At a minimum, the plan must include:

1. An organizational chart depicting the roles and describing the responsibilities of key organizational components

2. A list of key personnel responsible for managing and implementing the project, including present position descriptions and qualifications of key personnel

3. A concise discussion of the strategy to implement the requirements of Section VI

4. A detailed time-task plan for the 24-month project period (broken into two 12-month periods), clearly identifying major milestones. This must include designation of organizational responsibility and a schedule for the products and services identified in Section VI.

E. Budget

Applicants shall provide a detailed budget for each 12 month period of the project with a detailed justification for all costs, including the bases for computation of these costs. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. Applicants should highlight innovative, cost-effective measures of their proposals.

VIII. Procedures and Criteria for Selection

The evaluation of applications will be a three-step process. The applicants' organizational capability (as discussed in Sections V, VII and below) will be evaluated first. Applications from organizations determined not to meet these standards will not be further evaluated. The second step will be an evaluation of "understanding of the problem" and "implementation plan," as discussed in Section VII and below. Finally, the budgets of those applicants evaluated as qualified in steps one and two will be evaluated.

An applicant conference may be held and negotiations with more than one finalists may be held, if necessary, before a recipient is selected.

Applicants will be reviewed in terms of their responsiveness to the specifications of the solicitation, their organizational capability to achieve the goals and objectives of the project, their attention to substantive issues in the design, their implementation plan, and the cost-effectiveness of the proposed budget. All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria:

A. Understanding of the Problem (25 Points)

Proposals will be evaluated in terms of their understanding of both the substantive issues and the goals and objectives of the project.

B. Implementation Plan (40 Points)

The appropriateness of allocation of resources to accomplish the goals and objectives within the 24-month project period will be evaluated. Particular attention will be paid to the clarity and reasonableness of the time-task plan which identifies organization, and individuals' roles and responsibilities for the completion of significant tasks and development of products. Applicants must demonstrate that they are able to meet the needs of clearinghouse data retrieval and dissemination during the time specified. The proposal must show how needs of clearinghouse users will be met, with a particular emphasis on requirements of State and local law enforcement and criminal justice agencies.

C. Organizational Capability (20 Points)

The proposals will be evaluated on—

- The extent and quality of organizational and staff experience in the design and implementation of national statistical efforts of comparable content and scope
- The presence and extent of adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds.

D. Budget (15 Points)

Applicants must include a 24-month budget, broken into two 12-month phases, with a detailed narrative justifying the costs. Applications will be rated based on the cost-competitiveness, completeness, reasonableness and appropriateness of the budget in relation to the tasks to be accomplished.

Final decisions regarding the award of this cooperative agreement are reserved to the Director, BJS.

IX. Deadline for Submission

One signed original and five copies of the application must be mailed or delivered to the Director, Bureau of Justice Statistics, Room 1164–B, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531, by 5:30 p.m. on June 24, 1987. Specifically, those applications mailed to the above address must be postmarked before June 24, 1987. The necessary forms for applications may be obtained by writing to BJS. Questions regarding the solicitation may be directed to Sue A. Lindgren, (202) 724–7759, or at the above address.

X. Civil Rights Compliance

A. All recipients of BJS assistance including any contractors, must comply with the non-discrimination requirements of the Justice Assistance Act; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E and G.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

XI. Letter of Intent

Interested applicants should submit a letter indicating their intention to apply by 30 days prior to the proposal due date.

XII. Funding Period

The funding period for this project will commence on or about September 1, 1987.

Approved.

Dr. Steven R. Schlesinger,

Director, Bureau of Justice Statistics.

[FR Doc. 87–8077 Filed 4–9–87; 8:45 am]

BILLING CODE 4410–18–M

Office of Juvenile Justice and Delinquency Prevention

Advisory Board On Missing Children; Meeting

Swearing in ceremonies for the Attorney General's new Advisory Board on Missing Children will take place during a Press Conference on April 23, 1987 at 8:00 p.m. The Press Conference will be held in Ballroom A of the Vista International Hotel, 1400 M Street, NW., Washington, DC.

The Attorney General's Advisory Board will convene to conduct a business meeting on April 24, 1987 at 8:30 a.m. The meeting will be held at the Vista International Hotel in the Ash Lawn North room. Public comment will be heard at 3:00 p.m.

For further information, please contact Michelle Easton, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724–7655.

Approved:
Dated: April 7, 1987.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87–8005 Filed 4–9–87; 8:45 am]

BILLING CODE 44–1018–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL87-4 (January 2, 1987)—p. 8
District of Columbia:
DC87-1 (January 2, 1987)—pp. 90, 92
Massachusetts:
MA87-3 (January 2, 1987)—p. 401
New York:
NY87-2 (January 2, 1987)—p. 689
New York:
NY87-12 (January 2, 1987)—p. 790
Pennsylvania:
PA87-1 (January 2, 1987)—pp. 844, 846
Pennsylvania:
PA87-2 (January 2, 1987)—pp. 856, 858
Pennsylvania:
PA87-9 (January 2, 1987)—pp. 926-928
Pennsylvania:
PA87-11 (January 2, 1987)—p. 940
Pennsylvania:
PA87-14 (January 2, 1987)—pp. 948-949
Pennsylvania:
PA87-15 (January 2, 1987)—p. 958
Pennsylvania:
PA87-16 (January 2, 1987)—p. 962
Pennsylvania:
PA87-17 (January 2, 1987)—pp. 964-965
Pennsylvania:
PA87-19 (January 2, 1987)—pp. 978-979
Pennsylvania:
PA87-20 (January 2, 1987)—pp. 984-985
Pennsylvania:
PA87-21 (January 2, 1987)—pp. 990-991
Pennsylvania:
PA87-22 (January 2, 1987)—p. 994, pp. 996-997
Tennessee:
TN87-3 (January 2, 1987)—p. 1087

Volume II

Illinois:
IL87-1 (January 2, 1987)—p. 75
Illinois:
IL87-13 (January 2, 1987)—pp. 178-179
Indiana:
IN87-1 (January 2, 1987)—p. 236
Indiana:
IN87-2 (January 2, 1987)—p. 250
Indiana:
IN87-3 (January 2, 1987)—pp. 268-269
Indiana:
IN87-5 (January 2, 1987)—p. 292
Indiana:
IN87-6 (January 2, 1987)—p. 302
Ohio:
OH87-29 (January 2, 1987)—pp. 818, 833
Texas:
TX87-1 (January 2, 1987)—pp. 914-916
Texas:
TX87-21 (January 2, 1987)—p. 976

Volume III

California:
CA87-2 (January 2, 1987)—pp. 46-62b
Montana:
MT87-1 (January 2, 1987)—p. 167

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50

Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 3rd day of April 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87–7812 Filed 4–9–87; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A. Brandt Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 20, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 20, 1987.

The peititions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 30th day of March 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
A. Brandt Co. (Workers)	Ft. Worth, TX	3/30/87	3/9/87	19,419	Wood chairs and parts.
Baxter Travenol Lab. (Workers)	Mtn Home, AR	3/30/87	2/23/87	19,420	Pharmaceutical.
Bay Shipbldg. Corp. (Workers)	Sturgeon Bay, WI	3/30/87	3/2/87	19,421	Shipbldg. and repair.
Bedford Coat & Suit Co. (Workers)	Boston, MA	3/30/87	3/11/87	19,422	Women's jackets.
Borg Textile Corp. (LOC)	Jefferson, WI	3/30/87	3/20/87	19,423	Knitted deep pile fabric.
Britton Drilling Co. (Workers)	Midland, TX	3/30/87	2/6/87	19,424	Oil drilling.
CFC Wireline Inc. (CO)	Grand Prairie, TX	3/30/87	3/19/87	19,425	Logging & perf. oil serv.
Champlin Petroleum (CO)	Ft. Worth, TX	3/30/87	3/2/87	19,426	Crude oil.
Champlin Petroleum (CO)	Wilmington, L/B CA	3/30/87	3/2/87	19,427	Crude oil
Champlin Petroleum (CO)	Rock Springs, WY	3/30/87	3/2/87	19,428	Crude oil.
Climax Molybdenium Co. (Workers)	Empire, CO	3/30/87	2/7/87	19,429	Molybdenum alloy.
Coats & Clark, Inc. (Workers)	Newport News, VA	3/30/87	3/13/87	19,430	Sewing nations.
Deming Div. of Crane (USWA)	Salem, OH	3/30/87	3/20/87	19,431	Small industrial pumps.
Esso Exploration, Inc. (Workers)	Houston, TX	3/30/87	3/23/87	19,432	Crude oil.
Fina Oil & Chemical Co. (Workers)	Midland, TX	3/30/87	3/19/87	19,433	Exp/ ref/ sell crude oil.
Fiusche Supply, Inc. (Workers)	Electra, TX	3/30/87	3/17/87	19,434	Oilfield supplies.
G/A/F Chemicals, Corp. (Workers)	Bound Brook, NJ	3/30/87	3/20/87	19,435	Roofing granules.
Georgia Convertors, Inc. (CO)	Bremen, GA	3/30/87	3/20/87	19,436	Dress trouser/walk shorts.
(The) Hoosier Panel, Co. (CO)	New Albany, IN	3/30/87	3/18/87	19,437	Hardwood plywood and doors.
Hughes Tool Co. (Workers)	Corsicana, TX	3/30/87	3/12/87	19,438	Oilfield equipment.
Johnson Controls Inc. (Workers)	Milwaukee, WI	3/30/87	3/20/87	19,439	Parts for controls.
L.D. Van Valkenburg Co. (Workers)	Chicopee, MA	3/30/87	3/11/87	19,440	Buying imported products.
LTV Energy Prod. (Workers)	Houston, TX	3/30/87	3/13/87	19,441	Oilfield drilling equipt.
LaFarge Corp. (USAWA LU)	Alpena, MI	3/30/87	3/16/87	19,442	Shipment of cement.
NIBCO, Inc. (CO)	Augusta, AR	3/30/87	3/18/87	19,443	Brass plumbing and heating.
Orange County Coat Co. (ILGWU)	Newdurah, NY	3/30/87	3/16/87	19,444	Women's outerwear.
Pacific Chloride, Inc. (IAM&AW)	Beaverton, OR	3/30/87	3/19/87	19,445	Storage batteries.
Perreila Gloves Inc. (ACTWU)	Gloversville, NY	3/30/87	3/17/87	19,446	Leather gloves.
Petco (Workers)	Odessa, TX	3/30/87	2/11/87	19,447	Oilfield services.
(The) Protech Grp Inc. (Workers)	Munster, IN	3/30/87	3/14/87	19,448	Steel sheet and strip.
SSM Partnership (Workers)	Tullos, LA	3/30/87	3/23/87	19,449	Oil and gas.
Sealed Power Div. (UAW)	Muskegon, MI	3/30/87	3/23/87	19,450	Engine parts.
Terry Corp. (CO)	Windsor, CT	3/30/87	3/23/87	19,451	Steam turbines.
Terry R. White O/FConst (Workers)	Carm, IL	3/30/87	3/9/87	19,452	Install oil wells.
Verson Allsteel Press (Workers)	Dallas, TX	3/30/87	3/3/87	19,453	metal forming presses.
(The) West Bend Co. (A.I.W.A.)	West Bend, WI	3/30/87	3/16/87	19,454	Cookware appliances.
Werzalit of America (Workers)	Bradford, PA	3/30/87	3/23/87	19,455	Mfg and sales of table tops.
Westmoreland Plastics (Workers)	Latrobe, PA	3/30/87	3/19/87	19,456	Thermoplastics.

[FR Doc. 87–8056 Filed 4–9–87; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket No. M-87-72-C]

Abednego Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Abednego Coal Company, HC 81 Box 1624, Hinkle, Kentucky 40953 has filed a petition to modify the appliction of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15033) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Peitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-8057 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-84-C]

Eastern Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Coal Corporation, P.O. Box 219, Stone, Kentucky 41567 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Stone No. 4 Mine (I.D. No. 15-02096), its A-5 Mine (I.D. No. 15-07132), its Pegs Branch Mine (I.D. No. 15-09866), and its PC No. 2 Mine (ID. No. 15-15378), all located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery powered machines.

2. As an alternate method, petitioner proposes to install a battery plug locking mechanism, which will be affixed by permanent weld to the frame of each scoop in lieu of padlocks. The mechanism will consist of a fabricated metal bracket of ¼ inch plate-steel and a spring tensioned brass plunger with a handle. These locking mechanisms will be designed, installed and used to prevent the threaded rings from unintentionally loosening.

3. Petitioner states that the locking mechanisms will be easier to maintain than padlocks because there are no keys to be lost, there will be no lost padlocks and mud cannot get into the workings as with a padlock.

4. Miners who couple and uncouple battery plugs on these machines will be trained in the proper use of the locking devices, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 1, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-8058 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-55-C]

H L & W Coal Co. Petition for Modification of Application of Mandatory Safety Standard

H L & W Coal Company, 14 Maple Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its H L & W Slope (I.D. No. 36-07825) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the

steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-8059 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-7-M]

L.G. Everist, Inc.; Petition for Modification of Application of Mandatory Safety Standard

L.G. Everist, Inc., 3955 Youngfield, Golden, Colorado 80401 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Mount Olivet Development (I.D. No. 05-04206) located in Jefferson County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

2. Petitioner states that people working near audible backup alarms become insensitive to them over a period of time and tend to mentally "block-out" the sound.

3. As an alternate method, petitioner proposes to use a Doppler Radar device to alert the operator of impending collisions during back up. Petitioner feels that this device will not tend to cause immunity like the present back-up alarms.

4. In support of this request, petitioner states that normal operation of the pit will be excavation by hydraulic backhoe to stockpile and load-out with a single front-end loader. Light vehicular and foot traffic will be excluded from the load-out site at all times. Haul trucks will be over-the-road tractors with 30-foot end-dump trailers. Drivers will be required to stay in the trucks, and the site will be fenced and signed to exclude trespassers. The traffic pattern at the site will limit back up by the front-end loader to that part of the load-out cycle when the front-end loader is backing away from the stockpile with a full bucket.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-8060 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-76-C]

Lady Blue Coal Inc.; Petition for Modification of Application of Mandatory Safety Standard

Lady Blue Coal Inc., P.O. Box 40, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-14694) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances. Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-8061 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-63-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 14495, St. Louis, Missouri 63178 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment or slurry impoundments and impounding structures; abandoment) to its Rogers County No. 2 Mine (I.D. No. 34-00274) and its associated Fresh Water Lake (MSHA I.D. No. 1211-OK-9-001) located in Craig County, Oklahoma. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that prior to abandonment of any water, sediment, or slurry impoundment and impounding structure, the person owning, operating or controlling such an impoundment and impounding structure shall submit a plan for abandonment based on current, prudent engineering practices which shall contain provisions to preclude the probability of future impoundment of water, sediment, or slurry, provide for major slope stability, and include a schedule for the plan's implementation.

2. Petitioner requests a modification of the requirement of the standard for an abandonment plan which shall contain provisions to preclude the probablity of future impoundment of water. In further support of this request petitioner states that the size of the pond has been reduced significantly, and is only used as a utility pond for suppression of road dust. Normal maintenance to insure the continued integrity of the pond will continue to be performed.

3. Petitioner states that an alternate method of abandonment was implemented prior to September 4, 1986 by construction of a structure modification limiting potential storage to less than 20 acre feet and less than 20 feet high. Future reclamation plans will eventually be designed to totally reclaim the area to specifications to satisfy the State of Oklahoma, Mines and Minerals Development and the Federal Office of Surface Mining when mine operations end.

4. The pond was constructed in mid-1975 prior to MSHA dam standards. It was used for a minor haulroad dust suppression water source. On June 24, 1980, an initial plan package was submitted to MSHA District 10. The Plan was turned down because the apparent slope stability factor was only 1.21 at higher pool levels. However, the structure was classified as a low potential hazard structure of small size. On August 28, 1981, an addendum was submitted which included a proposal to flatten slopes to 3:1, install a 24 inch CMP as a principal spillway and lower the emergency spillway. After resubmission of additional information, MSHA approved the new plan on November 29, 1982 without a CMP. Mine operation continued to pump water from pond for mine use, maintaining a low operating pool of 20 acre feet or less; therefore, the proposed work was never done.

5. When even lower production became a reality and total mine reclamation was being planned, a modification plan was submitted on August 22, 1985 for abandonment reducing it from an MSHA pond to even smaller utility fresh water pond. MSHA approval was received August 27, 1985. Final configuration work was then completed, which included a lower 25-foot wide open channel spillway at an elevation of 833 and 14.8 acre feet normal pool, and a 100-year storm level of 834.6 feet at 18.8 acre feet of storage. The pond as it is now will not change configuration with current use as a small utility pond for suppression of road dust, and further, it cannot be altered again without other approved design. Normal maintenance to ensure the continued intergrity of the pond will continue to be performed by Peabody in compliance with other regulatory agencies. Final reclamation at mine closing will be of specifications to meet Oklahoma Mines and Minerals, and Federal Office of Surface Mining standards. Peabody will also notify MSHA of any and all final reclamation disposition.

6. Petitioner states that the proposed alternate method of abandonment will guarantee the same measure of protection of miners. The aforementioned modification plan work was undetaken as a safety precaution in accordance with MSHA Policy which allowed for abandonment in this manner. Additionally, abandonment from MSHA jurisdiction to a small, live pond with less than 20 acre feet of storage will eliminate the requirement of weekly inspection reporting.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 2, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-8062 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-73-C]

Raco Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Raco Mining Company, Rt. 2 Box 563, Williamsburg, Kentucky 40769 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 2 (I.D. No. 15-15085) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 1, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-8063 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-44-C]

Rushton Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Rushton Mining Company, P.O. Box 589, Philipsburg, Pennsylvania, 16866 has filed a petition to modify the application of 30 CFR 77.900 (low- and medium-voltage circuits serving portable or mobile three-phase alternating current equipment; circuit breakers) to its Rushton Mine (I.D. No. 36-00856) located in Centre County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that low- and medium-voltage circuits supplying power to portable or mobile three-phase alternating current equipment be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained and equipped with devices to provide protection against undervoltage, grounded phase, short circuit, and overcurrent.

2. As an alternate method, petitioner proposes to utilize a combination motor controller, of adequate interrupting capacity, to function as a suitable circuit breaker. Petitioner also proposes to utilize a ground monitoring device which drops out at 40 to 60 percent voltage to act as the undervoltage protection for the circuit. In further support of this request, petitioner states that:

(a) The combination motor controller system will be utilized when providing protection for single motor circuits;

(b) The use of combination motor controllers for the circuit protection does provide standardization of electrical equipment in processes comprised of both stationary and mobile three phase equipment;

(c) The point of circuit interruption is essentially the same physical location, whether the circuit breaker or motor controller opens the circuit. The circuit breaker and the motor controller are located in the same enclosure and physically separated by several inches;

(d) The motor controller is of adequate capacity for the intended circuit interrupting duty;

(e) Ground fault, overload and the ground monitor when activated, open the motor controller, thereby deenergizing the protected circuit. The motor controller will remain open until the fault condition is corrected and the protective devices are annually reset;

(f) Magnetic only circuit breaker, which is part of the combination controller, provides short circuit protection;

(g) The Ensign 6314-024 ground monitor will drop out before reaching 60%-40% input voltage level, lockout the contactor, and thereby provide undervoltage protection for the circuit; and

(h) If the motor sizes are increased, the combination motor controller will be upgraded to provide the same degree of interrupting capacity safety factor as specified in the original design.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: April 1, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-8064 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-68-C]

U.S. Steel Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

U.S. Steel Mining Co., Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15230 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Maple Creek Mine (I.D. No. 36-00970) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows: 1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to deteriorating roof conditions and numerous massive roof falls, certain return air-course of the mine cannot be safely traveled.

3. As an alternate method, petitioner proposes to establish mesuring stations where air and methane readings will be taken daily, and the results recorded in a book maintained on the surface. In further support of this request, petitioner states that:

(a) A date board will be maintained at each measuring station which will contain the initials, date and time of the readings;

(b) A diagram indicating the direction of air flow in the vicinity of each

measuring station will be posted at that measuring station;

(c) The vicinity of each measuring station and access thereto will be maintained in a safe and travelable condition;

(d) Signs will be posted along the track haulage roads designating the location of each monitoring station;

(e) Methane will not be allowed to accumulate in the subject return air course in excess of legal limits, and if a marked variation in air quality is recorded, as determined by readings taken at each monitoring station, immediate action will be taken to determine the cause and appropriate corrective action taken where necessary;

(f) The subject return aircourses will at no time be utilized as primary return aircourses for the ventilation provided to the working sections through which miners are required to travel; and

(g) Persons working in the area for the purpose of providing safe access to and from the measuring stations will be limited to a maximum of four at any given time. Each person working in the affected area will be required to wear or carry a self-rescue device at all times. Each person working in the affected area will be able to reach a separate split of air within a reasonable period of time.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 11, 1987. Copies of the petition are available for inspection at that address.

Dated: March 31, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-8065 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

New Mexico State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Technical Advisory Committee recommendation to the Environmental Improvement Division.

2. Notice of public hearing published in a newspaper of general circulation in the State at least thirty (30) days prior to the date of such hearing.

3. Public hearing conducted by the Environmental Improvement Board.

4. Filing of adoption regulations, amendments, or revocations under the State Rules Act.

Section 1952.363 of Subpart DD sets forth the State's schedule for adoption of Federal standards. By letter dated October 2, 1986, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the Plan, the State submitted standards comparable to 29 CFR 1910.401, Commercial Diving Operations (Amended) (50 FR 1050, January 6, 1985); 29 CFR 1910.1029, Coke Oven Emissions (Amended) (50 FR 37353, September 13, 1985); 29 CFR 1910.1047, Ethylene Oxide (Amended) (50 FR 41494, October 11, 1985); 29 CFR 1910.1200, Hazard Communication (Amended) (50 FR 48758-59, November 27, 1985); and 29 CFR 1910.1043, Cotton Dust (Amended) (50 FR 51173, December 13, 1985).

These standards which are contained in New Mexico Occupational Health and Safety Regulations Section 200—General Industry Standards were promulgated after public hearings held on June 11 and 12, 1986.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and accordingly are approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved Plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor-OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Director, Environmental Improvement Division, 1190 St. Francis Drive, Room 2200, Santa Fe, New Mexico 87501; and the Office of State Programs, 200 Constitution Ave., NW., Room N3700, Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposals and making the Regional Administrator's approval effective upon publication for the following reasons:

1. These standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

The decision is effective April 10, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Dallas, Texas, this 20th day of February, 1987.

Gilbert J. Saulter,

Regional Administrator.

[FR. Doc. 87-8055 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 87-30; Exemption Application No. D-6397 et al.]

Grant of Individual Exemptions; IBI, Inc. Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of

the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

IBI, Inc. Profit Sharing Plan and Trust Agreement and IBI, Inc. and Top Home Center, Inc. Defined Benefit Pension and Trust (the Plans)

[Prohibited Transaction Exemption 87–30; Exemption Application Nos. D–6397 and D–6398]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, for a period of 5 years, to the proposed sales by IBI, Inc. (IBI) of contracts for deed to the Plans, nor to the guarantee of repayment by certain shareholders of IBI, provided that the terms and conditions of such sales are at least as favorable to the Plans as those which the Plans could receive in similar transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 3, 1987 at 52 FR 3361.

For further information contact: Alan Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Maurice S., Rawling, M.D., P.C., Defined Benefit Plan and Trust (the Plan), Located in Chattanooga, TN

[Prohibited Transaction Exemption 87–31; Exemption Application No. D–6688]

Exemption

The sanctions resulting from the application of section 4975 of the Code, [1] by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of a parcel of real property and the improvements thereon to the Georgia Winery, Inc., a disqualified person with respect to the Plan, provided the Plan receives no less than fair market value for property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 3, 1987 at 52 FR 3362.

For further information contact: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Allen-Tamarak, Inc. Profit Sharing Plan and the Allen-Tamarak, Inc. Money Purchase Pension Plan (collectively, the Plans)

[Prohibited Transaction Exemption 87–32; Exemption Application Nos. D–6700 and D–6701]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a loan (the Loan) of $75,000 by the individual accounts in the Plans of Mr. Francis F. Allen to Bermuda Research Corporation, a party in interest with respect to the Plans, provided the terms of the Loans are at least as favorable to the Plans as those obtainable in an arm's lenght transaction with an unrelated party.

For a more compete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemtion published on February 3, 1987 at 52 FR 3363.

For further information contact: Ms Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Maryville-Alcoa Newspapers, Inc. Profit Sharing Plan (the Plan, Located in Maryville, TN

[Prohibited Transaction Exemption 87–33; Exemption Application No. D–6765]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of a certain parcel of real property (the Property) by the Plan to Tutt S. Bradford, party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the greater of either the sum of $75,000 or the fair market value of the Property on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 3, 1987, at 52 FR 3364.

For further information contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Pottsville Orthopedic Associates Pension Plan (the Plan), Located in Pottsville, PA

[Prohibited Transaction Exemption 87–34; Exemption Application No. D–6845]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed

[1] Because Maurice S. Rawlings is the sole shareholder of the Employer and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

cash sale by the Plan of six units (the Units) representing limited partnership interests in the American Rehab Center-Pottsville to Pottsville Orthopedic Associates, the sponsor of the Plan, provided that the sales price is the higher of either the fair market value of the Units or the Plan's total costs in connection with the acquisition and holding of the Units at the time the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 23, 1986 at 51 FR 45964.

Notice to interested persons: The applicant represents that it was unable to notify interested persons within the time period specified in the **Federal Reigster** notice published on December 23, 1986. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by January 21, 1987.

Interested persons were informed that they had until February 20, 1987, to comment or request a hearing with respect to the proposed exemption. No comments or hearing requests were received by the Department.

For further information contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Jamestown Clinic, Ltd. Employee Retirement Plan (the Plan), Located in Jamestown, North Dakota

[Prohibited Transaction Exemption 87–35; Exemption Application No. D–6936]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain improved real property to Medical Properties, Inc., a party in interest with respect to the Plan; provided that such sale is on terms no less favorable to the Plan than the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 3, 1978 at 52 FR 3366.

For further information contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of April, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–8047 Filed 4–9–87; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–6746 et al.]

Proposed Exemptions; Samuel Francis Ross, Jr. Keogh Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are

summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Samuel Francis Ross, Jr. Keogh Plan, Profit Sharing Retirement Plan (the Plan), Located in Belleville, IL

[Application No. D-6746]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan by the Plan of the lesser of $19,341 or 25% of the Plan's assets (the Loan) to Samuel Francis Ross, Jr. (Mr. Ross), a disqualified person with respect to the Plan, provided that the terms of the proposed Loan are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party at the time of the making of the proposed Loan.[1]

Summary of Facts and Representations

1. The Plan is a frozen Keogh plan of which Mr. Ross is sole participant. As of March 21, 1986, Mr. Ross' fully vested account balance in the Plan was $64,471.88.

2. The Plan proposes to lend to Mr. Ross the lesser of $19,341 or 25% of the Plan's assets secured by a second mortgage on Mr. Ross' personal residence located at 416 Oak Hill Drive in Belleville, Illinois (the Residence). The applicant represents that the Loan will be used in its entirety to reduce the outstanding first mortgage on the Residence held by Magna Bank of Belleville, Illinois, an unrelated third party. The first mortgage currently outstanding against the Residence amounts to $63,611. The Loan would be at the rate of 11% per annum payable in equal monthly installments of principal and interest for a period of fifteen years. The applicant represents that the interest rate charged on the Loan is the usual and customary rate currently charged by local financial institutions on similar loans.

[1] The applicant represents that Mr. Ross is the sole participant in the Plan (a Keogh plan). Accordingly, there is no jurisdiction under Title I of the Act pursuant to 20 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

3. On July 7, 1986, Scott M. Tade, of Tade Appraisal Company in Belleville, Illinois, estimated the fair market value of the Residence as of July 3, 1986 to be $239,000.

4. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 4975(c)(2) of the Code because: (a) The rate of return to the Plan will be substantially higher than its other investments; (b) The Loan will be secured by the Residence, which has an appraised value of at least 150% of all mortgage indebtedness; and (c) No more than 25% of the Plan's assets will be invested in the Loan.

Notice of interested persons: Because Mr. Ross is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For further information contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Wells Fargo Bank, N.A. (the Bank), Located in San Francisco, CA

[Application No. D-6770]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to: (1) The proposed purchase and sale of stocks between collective investment index funds (the Index Funds) sponsored by the Bank; (2) the proposed purchase and sale of stocks between the Index Funds and various model-driven collective investment funds (the Model-Drive Funds); (3) the proposed purchase and sale of stocks between Model-Driven Funds; and (4) the proposed purchase and sale of stocks between Index or Model-Driven Funds and various large pension plans (the Large Plans), under the terms and conditions set forth in this notice of proposed exemption.

Summary of Facts and Representations

1. The Bank provides investment advisory and trust services to many qualified pension and profit sharing plans (the Plans). The Bank sponsors and maintains the Index and Model-Driven Funds (collectively, the Funds) for the investment of Plan assets.

2. The Index Funds are collective investment funds that invest in common stocks listed in various stock price indices in the same relative proportions as are used by the relevant index. Currently the Bank has two Index Funds, the Equity Index Fund, which relies on the Standard & Poor's 500 Composite Stock Price Index (the S&P 500) and the Extended Equity Market Fund, which utilitizes the Wilshire 5000 Index (the Wilshire 5000). The Index Funds are passively managed, in that the choice of stocks purchased and sold, and the volume purchased and sold are made according to predetermined third party indices rather than according to active evaluation of the investments. A Plan invests in each Index Fund in a similar manner: A plan invests cash and/or in-kind contributions and receives investment units (Units) representing the Plan's proportional interest in the assets held by the Index Fund. When a Plan wants to liquidate its investment, it receives cash or in-kind distributions from the Fund in exchange for Units. Investments or withdrawals generally occur only on previously announced scheduled "opening" dates four times monthly. On these scheduled openings, the Bank on behalf of each Fund nets investments (including dividends received on stocks held by the Fund) in and withdrawals from the Fund against each other, and makes sales of purchases of Fund assets only as the aggregate amount invested in a Fund rises or falls. Transaction costs for investments or withdrawals are allocated amongst the Plans triggering the transaction on a given scheduled opening date. In addition, the S&P 500 and the Wilshire 5000 Index will occasionally add or delete a stock or change the relative capital weighting of a stock. The criteria for such changes are established and maintained by the respective Index. Generally, the addition or deletion of stock from the S&P 500 will require a mirror transaction in the Extended Equity Market Fund, in that stocks added to or deleted from the S&P 500 usually become necessary deletions from or additions to the Extended Equity Market Fund. These changes in the underlying Index are infrequent, although the radical shifts in the availability of equity stocks occasioned by recent corporate takeover activity has increased the frequency of changes in the Index. The Bank estimates that changes in the Index itself requiring shifts in an Index Fund's holdings occur on an average of twice monthly.

Finally, the Bank may also make dispositions of stocks listed in the S&P 500 Index Fund or Extended Equity Market Fund if the subject company has filed or appears likely to file for protection under bankruptcy laws. The Bank generally excludes no more than a handful of companies from Index Fund portfolios for this reason at any given time.

3. The applicant represents that if an Index Fund is required to engage in stock transactions because of one of the triggering situations described above, it must do so in the open market. By doing so, the Index Fund incurs substantial transactions costs including broker's commissions, the "marketmaker's spread" (the amount charged by the exchange specialist for accepting market risk in the stock price during the transctions), and the possible negative market impact of large block trades. The Bank is requesting an exemption to allow the direct cross-trades of stock between an Index Fund and other Index Funds. The applicant represents that approximately 11% of its Index Fund stock transactions would be eligible for such cross-trades and that these cross-trades would generate substantial transactions cost savings for the Index Funds, and therefore, for the investing Plans. The combination of a predetermined portfolio and increases or decreases in Fund assets being determined by the decision of Plan asset managers to invest or withdraw from the Index Fund means that the Bank on behalf of the Index Fund has no discretion as to which stocks to buy or sell or as to when to engage in these transactions.

Some Plans many also be managed in whole or in part by the Bank in the same manner as the Index Funds described above on an individual or stand-alone portfolio basis. An index portfolio for an individual Plan requires assets of at least $30,000,000 in order to effectively implement the indexing investing strategy. Such an index portfolio functions in the same way an Index Fund with one participating Plan. Therefore, references to Index Fund include such index portfolios.

4. The Model-Driven Funds are collective investment funds with portfolios which are determined by intricate models which examine the structural aspects of the stock market rather than the underlying stock value. Each Model-Driven Fund is a transformation of the S&P 500. An example is the Asset Allocation Funds. The Bank allocates asset allocation fund investments between S&P 500 common stocks, long-term U.S. Treasury Bonds, and money market instruments according to a computer model which uses objectively-determined data including: (1) Earnings, dividends, and price-earnings ratios for S&P 500 common stocks; (2) current yields on corporate bonds and money market instruments; (3) historical standard deviations and correlations of and between asset classes. The common stock portion of an asset allocation fund is invested in an S&P 500 Index Fund. When the asset allocation model requires a shift in the relative holdings of different classes of assets, the fund will invest in or withdraw funds from the S&P 500 Index Fund.

The Model-Driven Funds are passively managed funds just like the fundamental S&P 500 Index Fund. The investor in such a fund is not hiring an investment manager who actively monitors the market and buys or sells stocks based on evaluation of a particular stock's anticipated performance and its undervaluation or overvaluation by the market. Instead, an investor is hiring a concept. As with the Index Funds, there are discrete Model-Driven Funds for different groups of investors. For example, there are separate asset allocation funds for personal trusts and for foreign and charitable organizations. In addition, the Bank allows large individual investors (those with investments exceeding approximately $30 million) to establish separate accounts managed as Model-Driven Funds. Each of these discrete Funds or accounts is considered a Model-Driven Fund for purposes of this application.

5. The Model-Driven Funds enter the stock market for essentially the same reasons as the Index Funds: To account for changes in the model-determined portfolio and to account for aggregate investments in or withdrawals from the Model-Driven Fund. By cross-trading with other Model-Driven or Index Funds, Model-Driven Funds required by portfolio requirements or changes in Fund participation to acquire or dispose of stocks will be able to reduce the transaction costs.

6. Trades may also occur between Funds and Large Plans whose investment portfolio is not controlled by an index or model. The applicant represents that the Large Plans will have assets in excess of $50 million. Such trades will occur only when the Large Plans' fiduciaries, which are independent of the Bank, are fully informed of the cross-trade technique, provide advance written approval of such transactions, and are fully apprised of the transaction results. Further, cross-trades involving Large Plans would be limited to those situations where the Bank's advising role is restricted to either managing a portion of the Large Plan's assets through one or more of the Bank's passive investment strategies or acting as a trading adviser in a Large Plan portfolio restructuring. The most frequent scenario for Large Plan stock transaction would be as follows: A Large Plan decides through its independent fiduciaries to reallocate a portion of its assets currently invested by active investment managers into a passive fund with the Bank's assistance. The Bank and the Large Plan arrange to either invest in an existing Index Fund or Model-Driven Fund, or set up a separate account with the Bank to be managed as an Index or Model-Driven Fund. The Large Plan's current active portfolio must be liquidated to the extent necessary to replicate the desired Index or Model-Driven Fund. Generally, these restructurings occur in connection with a Large Plan decision to invest in one of the Bank's passive funds. However, some Large Plans have asked the Bank to carry out a restructuring program for them independent of future investments in the passive funds. In this instance, the Bank's only role as to the Large Plans is that of a "trading adviser" carrying out a Large Plan-initiated liquidation or equity restructuring.

7. The applicant further represents that when a Large Plan comes to the Bank to invest in a passive fund or to arrange its own passively managed portfolio, the Large Plan's assets must be transformed into an Index or Model-Driven Fund portfolio. In implementing the transformation, the Bank is limited by the stated portfolio, as to the transactions it can make. In these situations, the Bank is not in any kind of active investment advising role. The impetus for the investment comes from the independent fiduciaries of these Large Plans. Given such an investment by a Large Plan, the Bank's role is limited to recreating the required portfolio. By performing cross-trades with Index or Model-Driven Funds where possible, the Bank reduces the overall transactions costs incurred by both parties to the cross-trade. The Bank has a similar lack of discretion in the case or Large Plans which request the Bank to restructure (generally liquidate) a portfolio. The Bank then acts as the trading advisor to the Large Plan, arranging for the stock transactions within a stated time so as to minimize transaction costs. The opportunity to engage in cross-trades with Index and/or Model-Driven Funds occurs only when those Funds are required to

purchase the same stock which the large Plan is selling.

8. The applicant represents that when any of the Funds is required to make a sale or purchase of stocks on the market, the Fund, and any Plan(s) which may have invested or withdrawn Funds, bears substantial transactions costs, primarily in the form of brokerage commissions. The applicant represents that the average brokerage commission paid by the Bank for substantial transactions is 5 cents per share. The commission paid for the cross-trades is only 1 cent per share, which reflects the record-keeping costs of the brokers. In this regard, the applicant represents that the brokers are able to provide record-keeping services more economically than the Bank itself could. The applicant further represents that all the brokers to be used in the cross-trades will be unrelated to and independent of the Bank. The applicant estimates that if the Index Funds could have utilized this proposed exemption for the period January 1, 1986 to June 30, 1986, the Index Funds would have saved approximately $5,000,000 in commissions. In addition, the cross-trades between Funds and between Funds and Large Plans will avoid the negative market impact caused by large block transactions. The Bank will use the closing price on the day of the trade for shares listed on a national exchange or NASDAQ to set the share price for all cross-trades.

9. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) The Index and Model-Driven Funds will sell or buy stocks only according to their various "trigger" mechanisms and when a Plan invests in or withdraws from such a Fund; (b) the Large Plans will engage in cross-trades only in situatins where the Bank has no discretion with respect to the investment decision; (c) the price for the stocks will be the closing price for those stocks on the day of trading; (d) the Funds and Large Plans will save significant amounts of money on brokerage commissions; and (e) the Bank will receive no additional fees as a result of the proposed cross-trades.

Notice to interested persons: A notice will be mailed by first class mail to each Plan which invests in the Funds. The notice will contain a copy of the notice of pendency of exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment on or request a hearing regarding the proposed exemption. Such notice will be sent to the above-named parties within two weeks of the publication of the notice of pendency of exemption in the **Federal Register**.

For further information contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Castro Convertible Employee's Retirement Trust (the Plan), Located in New Hyde Park, NY

[Application No. D–6813]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the leasing of certain real property by the Plan to Castro Convertible Corporation (the Employer), provided that all of the terms of such lease are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: March 18, 1986.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with an estimated 230 participants. The Plan had total assets of $3,258,275 as of June 30, 1984. The trustees of the Plan are Bernard Castro and Theresa Castro (the Trustees). The Employer is a manufacturer asnd retailer of furniture and furnishings consisting primarily of convertible sofas and chairs.

2. In 1962 the Plan acquired certain real property located at 2475 Central Park Avenue, Yonkers, New York (the Property). The Property was acquired from an unrelated third party for a purchase price of $88,600. The Property is an irregular shaped lot containing an area of 10,894 square feet. The Property is improved with a single story structure containing approximately 3,000 square feet. The remaining 7,894 square feet are used for parking and driveways which service the structure. The Property is located in a commercial, retail and business district. The applicant represents that the highest and best use of the Property is as a retail store for a single tenant occupancy.

3. Since its acquisition in 1962, the Property has been leased to the Employer on a month-to-month basis (the Old Lease), for use as a retail showroom for the Employer's products and related offices. The Old Lease was at all times on a "net, net" basis so that in addition to the basic rental, the Employer has been responsible for the payment of all taxes and assessments, the making of all repairs to the Property (structural and otherwise) and for all expenses incurred in connection with the operation and maintenance of the Property.

4. The applicant represents that at all times from the date of acquisition of the Property in 1962, until and including June 30, 1984, the Employer paid to the Plan a rental equal to the fair market rental value for the Property and that the terms of the Old Lease were, in all respects, at least as favorable to the Plan as those of an arm's-length lease transaction with an unrelated party.[2]

5. The Plan desires to continue leasing the Property to the Employer on a "net, net" basis, with an annual rental calculated to produce a net 10 percent return on the fair market value of the Property. An independent appraisal of the Property was performed by John A. Munro, MAI, CRE, SRPA (the Appraiser). The Appraiser established the fair market value of the Property at $375,000 as of December 9, 1985. It is intended that the appraised value of the Property will be updated every 3 years. The Plan and the Employer entered into a 10 year lease commencing July 1, 1985 and ending June 30, 1995 (the New Lease) at a minimum annual rate of $37,500. The New Lease will contain a provision to adjust the annual rate upward (but not downward) on a triannual basis to yield a net 10 percent return on the appraised value of the Property. The Property comprised 10 percent of the Plan's assets as of June 30, 1984.

6. Mr. George M. Garfunkel will serve as the independent fiduciary for the Plan (Mr. Garfunkel). Mr. Garfunkel, who was admitted to practice law in the State of New York in 1964, assumed his responsibilities as independent fiduciary on March 18, 1986. He is a partner in the law firm of Garfunkel, Wild & Travis, P.C., Great Neck, New York. Mr. Garfunkel's area of specialization includes real estate, taxation and pension law. In his more than 20 years of practice, Mr. Garfunkel has

[2] The Department expresses no opinion with respect to the applicability of section 414 of the Act in this instance. The applicant represents that for the Plan's fiscal year ending June 30, 1985, the Employer paid excise tax in the sum of $1,876 in connection with the Old Lease. The Employer shall pay any additional excise tax properly assessed by the Internal Revenue Service in connection with the Old Lease and the New Lease within 60 days of the granting of the requested exemption.

negotiated, evaluated, and drafted numerous commercial lease agreements. Moreover, as an expert in pension law, Mr. Garfunkel is aware of his duties and responsibilities as a fiduciary under the Act. Mr. Garfunkel has heretofore not been involved in the subject leases and has no previous relationship with either the Plan or the Employer.

7. Mr. Garfunkel represents by letter of July 25, 1986 that he has reviewed the Plan documents, the New Lease, and the December 9, 1985 appraisal of the Property performed by John A. Munro, MAI. He states that in his opinion, the New Lease is a market place arrangement between landlord and tenant for transactions of this type and represents a reasonable and fair return to the Plan and its beneficiaries. Mr. Garfunkel represents that he has examined the Plan's investment portfolio as reported by the certified financial statements of June 30, 1985, prepared by Margolin, Winer & Evans, certified public accountants. He states that the 10 percent return to the Plan on its investment in the Property is an appropriate and desirable investment.

8. Mr. Garfunkel represents that he will regularly monitor all aspects of the New Lease throughout its term. Specifically, he will be actively involved and monitor the rental adjustments called for in the third, sixth and ninth years of the New Lease to be certain that the annual rental is equal to an amount equal to the fair market rental value of the Property.

9. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The New Lease provides a fair rate of return to the Plan;

(b) The Plan will receive a fair market rental rate as determined by a qualified independent appraisal, and

(c) The Plan's independent fiduciary has determined that the New Lease is in the interests of and protective of the Plan and its participants and beneficiaries.

For further information contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-9194. (This is not a toll-free number.)

American Income Property Fund (the Fund), Located in Chicago, IL

[Application No. D-6830]

Proposed Exemption

Section I. Exemption for certain transactions involving the fund

(a) Effective July 1, 1986, the restrictions of sections 406(a), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions between parties in interest and the fund: General.*

Any transaction between a party in interest with respect to a plan which has an interest in the Fund (the Participating Plan) and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if the party in interest is not American Realty Advisors (American Realty) or one of its affiliates, any other Fund maintained by American Realty, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interests of any other Participating Plans maintained by the same employer or employee organization in the Fund, does not exceed 10 percent of the total of all assets in the Fund.

(2) *Special transactions not meeting the criteria of section I(a)(1) between employers of employees covered by a multiemployer plan and the fund*

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan [as defined insection 3(37)(A) of the Act and section 414(f)(1) of the Code] that is a Participating Plan and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the transaction acquisition or holding—

The interest of the multiemployer plan in the Fund exceeds 10 percent of the total assets of the Fund, and the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, sales, or holdings of employer securities and employer real property*

(A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Fund which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to American Realty or to the employer, or any affiliate of American Realty or the employer in connection with tthe acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither American Realty nor any of its affiliates is an affiliate of the issue of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Fund owns the obligation at the time the plan acquires an interest in the Fund, and interests in the Fund are offered and redeemed in accordance with valuation procedures of the Fund applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Fund, not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. American Realty, its affiliates, and any collective investment fund maintained by American Realty or its affiliates, shall be considered to be persons independent of the issuer if American Realty is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan [as defined in section 407(d)(3) of the Act], the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which American Realty or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which American Realty or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party in interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) Effective July 1, 1986, the restrictions of section 406(a)(1) (A)

through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)((A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Certain leases and goods.* The furnishing of goods to the Fund by a party in interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party in interest and the incidental furnishing of goods to such party in interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Funds;

(B) The party in interest is not American Realty, any affiliate of American Realty, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing or real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the prior to the transaction.

(2) *Transaction involving places of public accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party in interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) Effective July 1, 1986, the restrictions of secton 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reasons of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Fund and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Fund, does not exceed 20 percent of the total of all assets in the Fund; and

(3) The person is not American Realty or an affiliate of American Realty.

(d) Effective July 1, 1986, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c) (1) (A) Through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Fund if no more than reasonable compensation is paid therefor, each purchase and sale is authuorized in writing by a fiduciary of the Participating Plan who is independent of American Realty and any of its affiliates, and the applicable conditions of Section III are met.

Section II. Excess holdings exemption for employee benefit plans

(a) Effective July 1, 1986, the restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c) (1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if: (1) The acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund: (2) the requirements of either paragraph (a) (1) or paragraph (a) (2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III. General conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of American Realty or American Realty's affiliates, the terms of the transaction are not less favorable to the Fund than the terms generally available is arm's length transaction between unrelated parties.

(b) American Realty or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of American Realty or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditonally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of American Realty or its affiliate, or commercial or financial information which is privileged or confidential.

Section IV. Definitions and general rules

For the purposes of this exemption,

(a) The term "Fund" shall include any collective investment fund that may hereafter be established, operated and managed by the Fund Sponsors, or by American Realty or its affiliate in essentially the same manner as the American Income Property Fund.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act [or a "member of the family" as that term is defined in section 4975(e)(6) of the Code], or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer [treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563(a)(4) and (e)(3)(c) of the Code, as one employer] who has made contributions to or under a muitiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquistion or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and (I)(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions consummated pursuant to this proposed exemption.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption (PTE) 80–51 (45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicants have requested relief are those which, in part, are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

Summary of Facts and Representations

1. The Fund, which was established on June 23, 1986 under the terms of the American Income Property Fund Group Trust Agreement (the Group Trust Agreement), is a closed-end, commingled, limited life trust, qualifying as a group trust described in Revenue Ruling 81–100, 1981–1 C.B. 326. The Fund provides pension and profit sharing plans and certain governmental plans described in section 818(a)(6) of the Code with a medium for pooling a portion of their funds for investment in a portfolio of income-producing real estate and participating mortgages. The Participating Plans in the Fund are qualified as trusts under section 401(a) of the Code and exempt from Federal income taxation under Code section 501(a).

2. The Fund invests primarily in long-term real estate-related investments although cash reserves and funds being held, pending opportunities for long-term investments, are placed in short-term investment vehicles. The Fund may hold title to real property, receive income therefrom as well as interests in portfolios of participating mortgages. The Fund has a liquidation date of December 31, 2003. This date may be extended with the approval of the Participating Plans owning 80 percent of the outstanding units (the Units) of the Fund. The Fund may be terminated earlier if so directed by Participating Plans owning four-fifths of the outstanding Units, or as the Fund's assets are liquidated. Then, the Fund will distribute the proceeds from the liquidation of its investments to the Participating Plans. It is anticipated that real estate investments will provide the Participating Plans with attractive returns and aid their fiduciaries in achieving the diversification required under the Act.

3. The Fund Sponsors are Rubloff Development Corporation (Rubloff Development), a privately-held Delaware corporation engaged in real estate development and management; Fiduciary Management Associates (FMA), a privately-held Delaware corporation which currently manages approximately $400 million in total assets for employee benefits plans and other entities, and which is registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940; and Mercantile Realty Partners (Mercantile), a privately-held Illinois partnership engaged in mortgage banking.

4. The initial Fund Trustees are Messrs. Robert F. Carr III; John J. Borland, Jr.; Alan R. Edelson; Philip Edward Arnold; Edwin N. Homer; and Thomas J. McCarthy. The Trustees are officers, directors or shareholders of, and they receive compensation from the general partners of American Realty, the

Fund's investment manager and/or related organizations. The Trustees are not compensated by the Fund. A Trustee may be removed for or without cause by unanimous decision of the unaffected Trustees at a duly constituted meeting or by the affirmative vote of the holders of two-thirds of the outstanding Units. To be duly constituted, a meeting will require the participation of a least two-thirds of all current Trustees.

5. In accordance with the Group Trust Agreement, the Trustees have entered into an investment management agreement (the Investment Management Agreement) under which the Trustees have, subject to certain limitations, delegated the responsibilities for managing the assets of the Fund to American Realty, an Illinois general partership formed in 1986 to engage in real estate development, management, sales and other services. The general partners of American Realty are FMA Realty, Inc., a Delaware corporation and a subsidiary of FMA; Rubloff Development; and Mercantile. American Realty has filed an application with the Securities and Exchange Commission for registration under the Investment Advisers Act of 1940 and it has acknowledged in the Investment Management Agreement its fiduciary responsibilities to the Fund in accordance with section 3(38) of the Act. The officers and directors of the partners of American Realty, most of whom serve as the Trustees, have extensive experience and expertise in the area of real estate management and investment.[3]

6. Interests in the Fund may only be held by plans meeting the requirements of Code section 401(a) and/or 818(a)(6). Participating Plans invest in the fund pursuant to the terms of a detailed offering circular (the Private Placement Memorandum) prepared by the Fund Sponsors. The Private Placement Memorandum describes the management, operation, investment objectives, income tax consequences and the compensation to be received by American Realty and its affiliates from the Fund. Participation in the Fund is achieved by allowing each Participating Plan to purchase Units of ownership. To participate, a Participating Plan is required to make a minimum purchase of two Units. Each Unit will cost $500,000. The minimum aggregate subscription is 30 Units ($15 million) and the maximum subscription is 200 Units ($100 million). If fewer than 30 Units ($15 million) of subscriptions have been received by no later than June 30, 1988, the Fund will terminate. The Participating Plans are cautioned in the Private Placement Memorandum not to invest more than 5 percent of their assests in the Fund in order to assure adequate diversification. As an outside limit, no Plan is permitted to invest over 20 percent of its net worth in the Fund unless the Plan is an "accredited investor" within the meaning of Rule 501 of Regulation D of the Securities and Exchange Commission. Finally, as required by Rev. Rul. 81–100, the interests of any Participating Plan in the Fund may not transferred or assigned to third parties.

7. None of the individual Trustees nor any employees, officers, directors or shareholders of the corporate general partners of American Realty or its affiliates will serve as a fiduciary of any Participating Plan (except to the extent that they are fiduciaries by reason of the Participating Plan's investment in the Fund), or as a director, or officer of any sponsor of any Participating Plan. Notwithstanding the above, FMA may, in certain instances, also serve as the investment manager of some of the assets of one or more Participating Plans provided that one of the assets managed by FMA may be invested in the Fund and further, that FMA exercises no influence or control over the Participating Plan's decision to invest any assets in the Fund.[4] Such investment decisions will be left to plan fiduciaries who will determine whether the investment is appropriate considering the overall investments, policies and objectives of the particular plan desiring to invest in the Fund.

8. Because the interest of any Participating Plan in the Fund is not assignable or transferrable to third parties, fiduciaries desiring to invest a Participating Plan's assets in the Fund will be fully advised to consider the long-term nature of the investment. If, however, a Participating Plan wishes to dispose of its investment in the Fund, it may notify the Trustees in writing that it wishes to redeem its Units in the Fund. To permit a redemption of the Units, American Realty may, under certain cirumstances, sell assets of the Fund provided American Realty determines that it is not disadvantageous to the Fund or the remaining Participating Plans to do so.

In addition, upon receipt of any request for redemption from a Participating Plan, before selling any property of the Fund or attempting to sell Units to a new plan, American Realty may notify all existing Participating Plans of the availability of additional Units which may be purchased proratably at a price not less than the then existing Unit net asset value, at which point the withdrawing Participating Plan's Units will be redeemed and reissued to those Participating Plans making additional contributions. Alternatively, unless contrary to the best interests of the Fund, American Realty will apply 50 percent of the net cash flow from the Fund to redeem the Units of any Participating Plan desiring redemption.

9. Pursuant to the Investment Management Agreement, American Realty will receive a fee from the Fund based upon the value of the assets under management.[5] No other fees or compensation will be paid to American Realty or its affiliates for services rendered to the Fund.

In addition, the Fund will pay all legal, accounting, advertising, promotional and other expenses incurred in connection with the organization and formation of the Fund and the distribution of the Units (excluding securities sales commissions, if any) up to a maximum amount equal to the greater of $125,000 or .5 percent of the aggregate capital contributions of the Participating Plans with the excess, if any, to be borne by American Realty. American Realty will pay the salaries of its administrative employees and the costs of the office space and facilities required by the Fund and American Realty. Except as otherwise provided, the Fund will pay all costs and expenses incurred in connection with the Fund's affairs including all expenses of acquiring, owning, operating and disposing of all properties, expenses and fees for the services of on-site real

[3] It is anticipated that future group trusts (the Future Funds) will be jointly sponsored by the Fund Sponsors. It is further anticipated that American Realty will be retained as the investment manager for the Future Funds. It is represented that all material representations with respect to the Fund in this propsoed exemption will also apply to all Future Funds.

[4] To the extent that, in the ordinary course of business, FMA, American Realty or any of their affiliates provides "investment advice" to a Participating Plan within the meaning of regulation 29 CFR 2510.3–21(c)(ii)(1)(B) and recommends an investment of the plan's assets in the Fund, the presence of an unrelated second fiduciary acting on the consultant/investment adviser's recommendations on behalf of the plan is not sufficient to insulate the advisers from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984.) The Department is unable to conclude that fiduciary self dealing of this type (if present) is in the interests or protective of plans and their participants and beneficiaries and, accordingly, has limited exemptive relief for the acquisition or sales of Units in the Fund to section 406(a) violations only.

[5] The Department is not proposing an exemption for the receipt of fees beyond that provided by section 408(b)(2) of the Act.

estate management personnel and leasing commissions to third parties, fees of legal counsel, accountants, appraisers, unaffiliated real estate brokers or for architectural or engineering or any other studies of proposed or existing investments. American Realty will receive no compensation or fees except as previously described.

When appropriate, the Fund will pay fees for real estate management and leasing services. Neither American Realty nor any other party in interest will be providing such services or be receiving such fees unless a prohibited transaction exemption is first obtained from the Department for such services and fees. No such exemption is requested at this time.

10. Because each Participating Plan will incorporate as part of such plan the terms, provisions and conditions of the Group Trust Agreement, the Fund will occupy a position equivalent to the trust created under such Participating Plan. Accordingly, pursuant to Revenue Ruling 81–100, it is the position of the Department that a "party in interest" or "disqualified person" as defined in the Act with respect to a Participating Plan may be viewed as party in interest with respect to the Fund. Accordingly, a transaction between such party and the Fund may be viewed as a prohibited transaction as described in section 406 of the Act, section 4975(c) of the Code, or both.

The applicant represents that if the Fund is unable to enter into transactions with certain persons because such persons are parties in interest with respect to a Participating Plan, the Fund's ability to make its investments prudently and conduct its operations solely for the benefit of the Participating Plans will be unduly restricted. In addition, the purchase and sale of Units of participation in the Fund may be considered a prohibited sale or transfer of assets between a Participating Plan and the Trustees that is not exempted by operation of the statutory exemption provided in section 408(b)(8) of the Act because the Fund is not maintained by a bank or an insurance company.

11. The applicant requests both retroactive and prospective relief for many of those classes of transactions between the Fund and certain parties in interest which were afforded exemptive relief in PTE 80–51. The applicant proposes that such classes of transactions be subject to similar conditions, limitations and restrictions as those delineated with respect to those transactions afforded exemptive relief under PTE 80–51.

12. The Trustees are authorized to designate an independent auditor (the Independent Auditor) to examine the books and records of the Fund. The Trustees have retained Arthur Andersen and Company, an independent certified public accounting firm to prepare a balance sheet, profit and loss statement and a statement of change in financial position for the Fund as of the end of each calendar year, which will be distributed to each Participating Plan within 90 days after the close of the calendar year. The financial statements will show all fees paid to American Realty and all distributions and new investments made within the year.

Furthermore, at least quarterly, each Participating Plan will receive from the Trustees a balance sheet and a statement of all property purchased since the date of the last quarterly report. From time to time, the Fund will provide whatever other information is reasonably requested by the Participating Plans.

All records pertaining to the Fund will be available for inspection during reasonable business hours by fiduciaries or other representatives of a Participating Plan. American Realty has notified each Participating Plan that it will be available to discuss matters pertaining to the Fund with any of them.

In addition, appraisals of Fund properties will be made at least annually by independent appraisers. These appraisals will be included in the above yearly reports.

13. The Independent Auditor's audit and examination procedures have been specifically designed for group real estate investment vehicles, such as the Fund. The Independent Auditor will examine the history of ownership in acquired property to ensure that neither the Fund Sponsors, American Realty nor their affiliates have ever had an interest in the property. The Independent Auditor will perform tests, on a sample basis, to ensure that, except as specifically provided in the exemption, lease transactions are not entered into with parties related to American Realty or the Fund Sponsors, their affiliates, or any investors in the Fund except to the extent these tests are obviated by the issuance of a prohibited transaction exemption. The Independent Auditor will recompute American Realty's investment management fee to ensure compliance with the Fund, the Private Placement Memorandum and the Investment Management Agreement. The Independent Auditor will maintain documentation of all materially relevant Fund matters and review the file for completeness. In addition, the Independent Auditor will verify cash in all bank accounts in which the Fund maintains deposits. Finally, the Independent Auditor will confirm all aspects of the sale agreement with those parties selling properties to the Fund, including a verification that no "side agreements" exist.

14. In summary, it is represented that the subject transactions meet the criteria of section 408(a) of the Act because: (a) The Fund will provide the Participating Plans with the benefits of the expert knowledge and experience of American Realty and the Fund Sponsors with respect to real estate investments; (b) each of the protections provided to the Participating Plans and their participants and beneficiaries by PTE 80–51 will be satisfied for the subject transactions, except that the Fund is privately maintained; (c) the decisions to invest in the Fund are made by knowledgeable fiduciaries of large employee benefit plans on the basis of a detailed offering circular; furthermore, such fiduciaries are unrelated to the Trustees, the Fund Sponsors, American Realty or any of American Realty's affiliates; and (d) an Independent Auditor will audit the operations of the Fund on an annual basis.

For further information contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

C. Fred Deuel & Associates, Inc. Profit Sharing Plan (the Plan), Located in St. Petersburg, FL

[Application No. D–6886]

Proposed Exemption

The Department is considering granting and exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of August 29, 1983 of a certain parcel of improved real property (the Property) to Mr. C. Fred Deuel (Mr. Deuel), a party in interest with respect to the Plan, for $42,300, provided that such amount was not less than the fair market value of the Property on the date of the sale.

Effective Date: If the proposed exemption is granted, the exemption will be effective August 29, 1983.

Summary of Facts and Representations

1. The Plan is a defined contribution plan which, as of August 31, 1986, had approximately 42 participants and total net assets of $845,655.20. Mr. Deuel and Mr. Grady Johnson (Mr. Johnson) are the trustees of the Plan (the Trustees). Mr. Deuel is the president and majority shareholder of C. Fred Deuel & Associates, Inc. (the Employer), the Plan's sponsor. Mr. Johnson is the treasurer and a sharholder of the Employer.

2. The Property is a parking lot on the southwest corner of 1st Avenue North and 16th Street, St. Peterburg, Florida. The Plan purchased the Property in September 1971 from an unrelated party for $22,000. The Plan leased the Property to the Employer from the date of purchase until August 1983, at which time the Plan sold the Property to Mr. Deuel for $42,300 in cash. During the time the Plan leased the Property to the Employer, the Plan received a total of $8,701.10 in rent from the Employer, which was less than the fair market rental value of the Property. The Employer's business is situated on an adjoining site, which is owned by Mr. Deuel. The Property was used as a parking lot for the employees of the Employer. The Employer made certain improvements to the Property in order to make the Property serviceable as a parking lot. The Employer paid for these improvements. The applicant states that the market value of these improvements was included in the purchase price for the Property which the Plan received.

3. The Property was appraised on August 19, 1983 by Bert F. Finch, Jr., M.A.I. (Mr. Finch), and independent real estate appraiser in St. Petersburg, Florida, as having a fair market value of $42,300. Mr. Finch states that the appraisal included the market value of the parking lot improvements ($8,300) in use with the underlying land. By letter dated February 6, 1987, Mr. Finch represents that consideration has been given to any possible special value of the Property to Mr. Deuel as a result of the ownership by Mr. Deuel of property adjacent to the Property. However, Mr. Finch states that the fair market value of Property, as of the date of the previous appraisal, was not enhanced by the fact that Mr. Deuel owns the adjacent property.

4. The applicant states that Form 5330, Return of Initial Excise Taxes Relating to Pension and Profit Sharing Plans, will be filed with the Internal Revenue Service and that all appropriate excise taxes for the previous leasing of the Property to the Employer will be paid by the Employer within 60 days of the date of a grant of an exemption for the past sale of the Property. In addition, Mr. Finch has provided an independent apraisal of the fair market rental value for the Property during the lease. The Employer agrees to pay all additional back rent, plus interest on such rent, which the Plan is due for the Employer's past use of the Property based on the difference between the rental amounts paid under the lease and the fair market rental value for the Property, as established by Mr. Finch's appraisal.

5. The applicant represents that the Plan sold the Property to the Employer because the Trustees believed that the Plan's revenues could be increased if the Property were sold and the proceeds reinvested in other assets. In addition, the Plan did not pay any commissions or other expenses with respect to the sale.

6. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because: (a) The sale was a one-time cash transaction; (b) the Plan received fair market value for the Property as established at the time of the transaction by an independent, qualified appraiser; (c) no brokerage commissions or other expenses were charged to the Plan in connection with the sale; and (d) the transaction allowed the Plan to divest itself of the Property and reinvest the sale proceeds in investments yielding a greater rate of return.

For further information contact: Mr. E.F. Williams of the Department, telephone (202) 532–8881. (This is not a tool-free number.)

The Budd Profit Sharing Plan (the Plan), Located in Short Hills, NJ

[Application No. D–6939]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan by the Plan of $300,000 to Budd Larner Gross Picillo Rosenbaum Greenberg & Sade, P.C., the Plan sponsor, under the terms and conditions described in this notice of proposed exemption, provided that such terms and conditions are not less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated third party.

Summary of Facts and Representations

1. Budd Larner Gross Picillo Rosenbaum Greenberg & Sade, P.C., the Plan sponsor (the Plan Sponsor), is a law firm located in Short Hills, New Jersey.

2. The Plan had in excess of $1,400,000 in assets and had 70 participants, both as of August 31, 1985. The Trustees of the Plan are David R. Gross, Mark D. Larner, and Michael M. Rosenbaum.

3. The Plan proposes to lend $300,000 (the Loan) to the Plan Sponsor to pay for capital improvements made to premises recently leased by the Plan Sponsor for its principal offices. The total amount of the Loan shall not, in any event, exceed 25% of the total assets of the Plan.

4. The proposed Loan will be repaid in principal payments in the amount of $15,000 on the last day of each of March, June, September, and December over the life of the Loan. Interest payments shall be made monthly on the last day of each calendar month, and shall be computed on the then outstanding balance of principal at the rate of 2% over the prime lending rate of Midatlantic National Bank of Newark, New Jersey, as determined on the first day of January and July in each calendar year. The term of the Loan shall be for five years. The Loan will be secured by a first lien on all of the Plan Sponsor's assets, including leasehold improvements, furniture and fixtures and accounts receivable. Accounts receivable, as of May 31, 1986, were approximately $2,279,000. The aforesaid first lien will be evidenced by a Security Agreement and Financing Statement (UCC–1) on all said assets. The applicant represents that at the present time there are no other obligations of the Plan Sponsor for which any of its assets or accounts receivable are pledged as security and that no such pledging is anticipated during the term of the Loan.

5. H. Charles Hess, CPA (Mr. Hess), of the Millburn, New Jersey accounting firm of Hess, Keeley & Co., has agreed to serve as the independent fiduciary of the Plan with respect to the Loan. Mr. Hess represents that he is qualified to serve in this capacity by virtue of his significant ERISA experience, and is aware of the duties, responsibilities and liabilities entailed in acting as independent fiduciary with respect to the Loan. Mr. Hess further represents that he is not in any way related to the Plan Sponsor, the Plan or any of the principals thereof.

Mr. Hess represents that the proposed transaction is in the best interest of the

Plan and its participants and beneficiaries since it provides the Plan a rate of return which is greater than that generally available to the Plan in the market place. Mr. Hess further states that the proposed Loan would be adequately secured by the accounts receivable of the Plan Sponsor.

Finally, Mr. Hess states that after having examined the Plan's investment portfolio, considered the Plan's liquidity requirements and examined the diversification of the Plan's assets, he has concluded that the proposed transaction complies with the Plan's investment objectives and policies.

In his capacity as independent fiduciary, Mr. Hess will monitor the proposed transaction throughout its term on behalf of the Plan and will have authority to enforce the rights of the Plan and ensure that the terms of the proposed transaction are adhered to, specifically including, but not limited to, ensuring that the value of the collateral securing the proposed Loans remains at no less than 200% of the outstanding balance of the Loan.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria under section 408(a) of the Act because: (a) The Loan will be approved, monitored, and enforced by an independent fiduciary; (b) the Loan will be secured by the value of the accounts receivable of the Plan Sponsor, which will at all time be no less than 200% of the outstanding balance of the Loan; (c) the Loan will be for no more than 25% of the Plan's assets; and (d) the Plan's independent fiduciary has determined that the Loan is prudent and in the best interest of the participants and beneficiaries of the Plan.

for further information contact: Joseph L. Roberts III of the Department, telephone (202) 523-9194. (This is not a toll-free number.)

Simpson Manufacturing Co., Inc. Profit Sharing Plan (The Plan), Located in San Leandro, CA

[Application No. D-7002]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Plan of a parcel of real property located at 1450-1532 Doolittle Drive, San Leandro, California (the Property) to Simpson Manufacturing Co., Inc. (Simpson), for $2,500,000 in cash, including the repayment by the Plan of the loan financing the Property to Bank of America N.T. & S.A. (the Bank), provided the sales prices was not less than the fair market value of the Property on the date of the sale.

Effective Date: If this proposed exemption is granted, it will be effective December 22, 1986.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which had 92 active participants as of December 31, 1985. Simpson, the Plan sponsor, is a manufacturer of pre-fabricated housing products.

2. In December, 1982, the Plan purchased the Property for $328,000, subject to a $260,000 note and deed of trust. The $260,000 was loaned (the Loan) to the Plan by the Bank, which was also the Plan's trustee. Also in December, 1972 the Plan entered into a 10 year lease agreement (the Lease) with Simpson for the Property. Effective December 1, 1982, the Lease was renewed (the Renewal), with Simpson Strong-Tie Company, Inc. (Strong-Tie) and Simpson Structures, Inc. (Structures), two wholly-owned subsidiaries of Simpson, as lessees.

3. Simpson applied to the Department in 1984 for an exemption to permit the continuation of the Renewal and the Loan beyond July 1, 1984. Simpson represented that the Lease, the Renewal and the Loan were all exempt from the prohibited transaction restrictions of sections 406 and 407(a) of the Act and section 4975 of the Code until June 30, 1984 by virtue of sections 414 and 2003 of the Act.[6] The Department exempted the continuation of the Loan, effective July 1, 1984, and the continuation of the Renewal for the period from December 4, 1984 through December 31, 1987, in PTE 85-105.

4. In PTE 85-105, Simpson represented that on or before December 31, 1987, the Property would be sold by the Plan or otherwise disposed of, or an additional exemption to continue the arrangement beyond December 31, 1987 would be sought. On December 22, 1986, the Plan sold the Property to Simpson for $2,500,000 in cash. No commissions were paid on the sale. Mr. Steven Chan, M.A.I., an independent appraiser in San Leandro, California, appraised the Property as having a fair market value of $2,500,000 as of December 15, 1986. on December 22, 1986, the Plan also repaid the Loan to the Bank. No prepayment or other penalty was charged to the Plan in connection with repayment of the Loan.

5. Mr. William Figara, president of the Alpha Capital Company, an independent investment advisory firm located in Oakland, California, has been the independent fiduciary for the Plan appointed in connection with the transactions exempted by PTE 85-105. Mr. Figara represents that he examined the facts surrounding the subject transactions as of December 16, 1986, and at that time he determined that the sale of the Property would be in the best interests of the Plan and of its participants and beneficiaries. Mr. Figara approved of the appointment of Mr. Chan as the independent appraiser. Mr. Figara represented that the sale of the Property to Simpson would have all of the attributes and safeguards of an arm's-length transaction with a third party. In addition, as a result of the sale, the liquidity of Plan assets would be increased and there would be an opportunity for greater diversification of Plan assets.

6. In summary, the applicant represents that the subject transaction met the criteria of section 408(a) of the Act because: (1) The sale was a one-time transaction for cash, and no commissions were paid on the sale; (2) the subject transactions enabled the parties to end on-going relationships which would have required additional exemptive relief; (3) the sales price for the Property was determined by Mr. Chan, a qualified, independent appraiser; and (4) the transactions were approved by Mr. Figara, the Plan's independent fiduciary, who determined they were appropriate for the Plan and in the Plan's best interest before the Plan engaged in the transactions.

For further information contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Dayton Area Building and Construction Industry Investment Plan (the Program), Located in Dayton, OH

[Application Nos. D-7003 and D-7004]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is

[6] The Department expresses no opinion, either in Prohibited Transaction Exemption 85-105, 50 FR 24600, June 11, 1985 (PTE 85-105) or in this proposed exemption, as to whether the Lease, the Renewal and the Loan were statutorily exempt until June 30, 1984 by reason of sections 414 and 2003 of the Act.

granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the proposed participation by employee benefit plans in construction loans through the Program where such loans are already committed to by certain lending institutions to parties in interest with respect to such plans, provided that the terms of the loans are not less favorable to the plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as described herein are complied with during the operation of the Program.

Summary of Facts and Representations

1. Employee benefit plans (the Plans) co-sponsored by local building and construction industry unions [7] affiliated with the Dayton Building Trades Council and local associations affiliated with the West Central Ohio Division of the Associated General Contractors Association and/or other employer associations representing building and construction industry employers in the Dayton area are in the process of establishing the Dayton Area Building and Construction Industry Foundation (the Foundation). The following Plans will be part of the Foundation and participate in the Program: Miami Valley Carpenters District Council Pension Plan and Trust; International Brotherhood of Electrical Workers Local No. 82 Joint Pension Plan and Trust; Bricklayers and Masons Local No. 22 Pension Plan and Trust; Iron Workers District Council of Southern Ohio and Vicinity Pension Plan and Trust; Ohio State Roofers and Waterproofers District Council Pension Plan and Trust; Plumbers and Pipefitters Local No. 162 Pension Plan and Trust; and Sheet Metal Workers' Local Union No. 224 Pension Plan and Trust. The jurisdiction covered by the Plans is the Dayton, Ohio area.

The Foundation will provide a procedure and system whereby member plans may invest in construction mortgage loans. The Foundation is to be administered by a Board of Trustees (the Trustees). Every employee benefit plan participating in the Foundation will name two trustees to serve on its Board, one union trustee and one management trustee. The Trustees are required and directed by the Foundation Agreement to establish and administer the Program.

2. The Trustees are developing a package of documents for the operation and administration of the Program. The Trustees are also contacting every bank, savings and loan association and insurance company, as defined in Part B of Prohibited Transaction Exemption 76–1 (PTE 76–1, 41 FR 12740, pg. 12743, March 6, 1976), in the jurisdiction covered by the Foundation, and requesting that such entities allow the Foundation to participate in all construction mortgage loans of $200,000 or more in which such lending institutions have made a legally enforceable commitment.[8]

All institutions agreeing to participate with the Foundation will agree to: (a) Notify the Trustees (or Administrative Manager) of the Foundation of all applications for construction mortgage loans which have been approved by the institution and consented to be submitted by the borrower; and (b) supply the Trustees with any requested data and information concerning the loans. The applicants represent that all lending institutions will affirmatively recommend that borrowers consent to the submission of the loan documents to the Program. In this regard, the applicants represent that the borrower refusal rate will constitute 12% to 20% of all transactions. Upon receipt of this information from the institutions, the Foundation will notify the trustees or other designated representatives of every participating Plan of all information received by them. The trustees of the participating Plans will then determine whether they intend to participate in a specific construction loan and, if so, the amount of their participation.

3. The Foundation will accumulate the responses from all of the participating Plans and will then advise the lending institution of the Foundation's desire to participate in a loan and, if so, the amount of the participation. The amount of the participation will be the amount of the aggregate participation by the individual Plans. Each said loan will be deemed and construed to constitute a separate and distinct legal transaction and will be documented as a separate trust. The Foundation will maintain its books and records of accounts accordingly.

4. Each participating Plan will, within 30 days of its determination and notification of its intention to participate in a specific construction mortgage loan, forward the amount of its participation to the lead lending institution. The lead lending institution will keep all such advances productively invested until advances are required to be made to the borrower. The earnings on such advances will be a part of the advance and any excess will be remitted by the institution to the participating Plans.

5. The Foundation will keep proper books and records to account for all advances from participating Plans and all returns of principal and/or income from the lending institution making the loan. All returns of principal and/or interest by the lending institution for participation in any construction mortgage loan will be returned to the trustees of the participating Plan(s) within five days after receipt. Periodically, the Foundation will report to the trustees of the participating Plans and to the affiliated local unions and management associations on its operations. No Foundation Trustee will receive any compensation for his services to the Foundation or the Program. The Foundation may incur reasonable expenses for necessary professional services to implement and operate the Program and may obtain from the lead mortgage lenders and/or the participating Plans reimbursement for reasonable expenses actually incurred. No part of the principal or income of any investment will be received or retained by the Foundation or its Trustees.

6. Because some construction loans may be made to parties in interest with respect to the participating Plans, such as contributing employers, the applicants seek an exemption from section 406(a) of the Act for the transactions. The applicants represent that the Program documents will provide that a trustee of any Plan which has an interest in the employer entity involved in a construction project to be financed by a commitment must: (a) Abstain himself from voting on a participation determination; (b) absent himself from that portion of the Plan trustees' meeting when the issue of the purchase of such participation is under discussion and consideration; and (c) represent on the record that he has not attempted to exert any influence on any trustee regarding the participation. The applicants further represent that, because of such Program document language, no relief from section 406(b) of the Act for Program transactions is requested.[9]

[7] All of the local unions are local affiliates of international unions affiliated with the AFL–CIO Building and Construction Trades Section.

[8] Part B of PTE 76–1 provides, in general, exemptive relief from section 406(a) of the Act for construction loans made by multiple employer plan to a participating employer if, inter alia, the decision to make the loans is made on behalf of the plan by a bank, savings and loan association or insurance company as described in that exemption.

[9] In this exemption, the Department expresses no opinion as to whether transactions involving construction loans to parties in interest will involve

Continued

7. The applicants represent that lending institutions will have made a formal and legally binding commitment to make the construction mortgage loan before the opportunity for participation by the Plans is distributed through the Program. The applicants represent that the Foundation will receive from all cooperating lending institutions all qualified loan commitments for consideration whether or not such commitments are for local or non-local developers or construction projects or union-built or non-union built construction projects. The applicants further represent that the Foundation will not participate in a loan unless it is at or above the prevailing market rate of interest and value for comparable loans.[10] In no event will participating plans either individually or in the aggregate acquire more than a 50% participation in any one loan.

8. The applicants represent that participating plans will invest *ab initio* together with a lending institution and will not be purchasing participation interest from such lending institution. As well, the applicants represent that the participating Plans will receive their pro rata share of the points charged by the lending institution to the extent such points represent a return on the loan and not compensation and/or reimbursement to the lending institution for actual expenses incurred and/or services rendered in servicing the construction mortgage loan. A Plan's pro rata share will be the ratio of the amount of the Plan's funding participation to the total amount of the loan. To the extent the above transactions, or any other transactions between the Plans and the lending institutions, constitute violations of section 406 of the Act, the Department is not proposing relief for such transactions.

9. The applicants represent that, in the event of a default by a borrower, the lead lending institution will have responsibility to enforce the rights of all of the lenders, including participating interest holders, under the loan. The applicants further represent that all of the loans subject to the Program will remain in the portfolio of the lead lending institution and thus not be transferred to other lenders.

10. The applicants represent that before a loan is made, the Foundation will receive from the lead lender a written commitment for permanent financing from a person other than a Plan which is a member of the Foundation to enable full repayment of the loan upon completion of construction. In addition, the Foundation will not accept loan participations by any Plan which would, as to any individual loan participation, exceed 10% of the assets of the Plan, or in the aggregate with all other construction loan participations, exceed 25% of the assets of the Plan. Further, the Foundation will maintain or cause to be maintained for a period of six years from the date of each loan participation such records as are necessary to enable the Department, the Internal Revenue Service, the Plan's participants and beneficiaries, any employer of plan participants and beneficiaries, or any employee organization whose members are covered by the Plans to determine whether all conditions of the exemption have.

11. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) Trustees of each participating Plan will have sole and exclusive authority to cause the Plan to participate in a loan; (b) the lending institutions will have made a legally enforceable commitment to make a construction loan before the Plans consider participation in a loan; and (c) no more than 10% of the assets of any participating plan may be invested in any individual loan participation and no more than 25% of a plan's assets may be invested in construction loans in the aggregate.

Notice to Interested Persons: Notice to interested persons will be provided within 30 days of the date of publication of this notice in the **Federal Register**. Notice will include a copy of this notice as published in the **Federal Register** and a statement informing interested persons of their right to comment. Comments to the Department are due within 60 days of the date of publication of this notice.

For further information contact: Betsy Scott of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

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transactions as described in section 406(b) of the Act. As well, the Department is not expressing an opinion as to whether the structure, maintenance, and operation of the Program, including the participation with the lending institutions in construction loans to non-parties in interest, will violate provisions of Part 4 of Title I of the Act. The Department notes, as stated in the preamble to Part B of PTE 76-1, 41 FR 12743, that a loan made to a non-party in interest may give rise to a prohibited transaction if, for example, the loan is made in the context of an arrangement for a specific participating employer to furnish a portion of the construction and such employer has a controlling influence over the plan's decision to make the loan.

[10] The Department notes that to the extent the fiduciaries of the participating Plans restrict their consideration of investment opportunities for non-economic reasons, such conduct may involve certain violations of Part 4 of Title I of the Act which violations, if present, would not be provided relief by this exemption.

In this regard, section 404(a)(1) of the Act requires among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. To act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for his plan. Because construction loans are investments which would be selected, if at all, in preference to alternative investments, a loan would not be prudent if it provided a plan with less return in comparison to risk than comparable investments available to the plan, or if it involved a greater risk to the security of plan assets than other investments offering a similar return.

The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in construction loans, a fiduciary must ordinarily consider only factors relating to the interest of plan participants and beneficiaries in their retirement income. For example, a decision to make a loan may not be influenced by a desire to stimulate the construction industry and generate employment, unless the loan, when judged solely on the basis of its economic value to the plan, would be equal or superior to alternative investments available to the plan. (See Advisory Opinion 81-12A, January 13, 1981).

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 7th day of April, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-8048 Filed 4-9-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering.

Date and Time: April 27-28, 1987, 9:00 a.m.-5:00 p.m., April 27, 1987, 8:30 a.m.-3:00 p.m., April 28, 1987.

Place: National Science Foundation, 1800 "G" Street, NW., Room 540, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Mrs. Mary Poats, Executive Secretary, Advisory Committee for Engineering, Room 537, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-9571.

Minutes: Mrs. Mary Poats at the above address.

Purpose of Meeting. To provide advice, recommendations, and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: Discussion on issues, opportunities and future directions for the Engineering Directorate; discussion of Engineering Directorate budget situation as well as other items.

April 6, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-7997 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Biochemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, The National Science Foundation announces the following meeting.

Name: Advisory Panel for Biochemistry.

Date: Monday and Tuesday, April 27 and 28, 1987 from 9:00 am to 5:00 pm.

Place: Historic Inns of Annapolis, Annapolis, Maryland.

Type of meeting: Closed.

Contact person: H. T. Huang, Program Director and Estella K. Engel, Associate Program Director, Biochemistry Program, Room 325, Telephone (202) 357-7945.

Purpose of advisory panel: To provide advice and recommendations concerning support for Biochemistry research proposals.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 97-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

April 6, 1987.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-7994 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Biological Instrumentation; Meeting

In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biological Instrumentation.

Date and time: Monday, April 27, 1987 from 8:30 a.m. to 7:00 p.m. Tuesday, April 28, 1987 from 8:00 a.m. to 5:00 p.m. Wednesday, April 29, 1987 from 8:00 a.m. to 5:00 p.m.

Place: San Diego Supercomputer Center La Jolla, CA 92138.

Type of meeting: Closed.

Contact person: John C. Wooley, Program Director, Biological Instrumentation, Room 325E, Telephone 202/357-7652.

Purpose of advisory panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10 (d) of Pub. L. 97-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 6, 1987.

[FR Doc. 87-7995 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Developmental Neuroscience Program; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Developmental Neuroscience Program.

Date & time: April 27, 28, 29, 1987: 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 2000 L Street, NW., Washington, DC. Meeting is to be held in room 613.

Type of meeting: Part open—Open Tuesday 4/28/87—1:00 p.m. to 2:00 p.m., Closed 4/27/87 9:00 a.m. to 5:00 p.m., Closed 4/29/87 9:00 a.m. to 5:00 p.m.

Contact person: Dr. Frank D. Collins, Program Director for Developmental Neuroscience Program, Room 320, National Science Foundation, Washington, DC. 20550, Telephone (202) 357-7042.

Summary minutes: May be obtained from the Contact Person at the above stated address.

Purpose of meeting: To provide advice and recommendations concerning support for research in the Developmental Neuroscience Program.

Agenda: Open—General discussion of research trends and opportunities in Developmental Neuroscience. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 6, 1978.

[FR Doc. 87-7996 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Ethics and Values Studies

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ethics and Values Studies.

Date & time: April 27, 1987, 8:30 a.m. to 5:00 p.m., April 28 1987, 8:30 a.m. to 5:00 p.m.

Place: Room 628, National Science Foundation, 1800 G Street NW., Washington, DC.

Type of meeting: closed.

Contact Person: Dr. Rachelle Hollander, Coordinator, Ethics and Values Studies, National Science Foundation, Washington, DC 20550, Telephone (202) 357-9894.

Summary minutes: May be obtained from the contact person at the above address.

Purpose of meeting: To provide advice and recommendations concerning support for research and related activities in this field.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 552b(c). Government in the Sunshine Act

M. Rebecca Winkler,

Committee Management Officer.

April 6, 1987.

[FR Doc. 87-7998 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Prokaryotic Genetics; Meeting

In accordance with the Federal Advisory Panel Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Prokaryotic Genetics.

Date & time: Monday, April 27—Wednesday, April 29, 1987 8:30 a.m.—5:00 p.m.

Place: INN by the SEA, 7830 Fay Avenue, La Jolla, California 92037.

Type of meeting: closed.

Contact person: Dr. Philip D. Harriman, Program Director, Prokaryotic Genetics; (202) 357-9687.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463, the Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Rebecca Winkler,

Committee Management Officer.

April 6, 1987.

[FR Doc. 87-8000 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Sociology; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Sociology.

Date/time: April 27, 1987, 9:00 a.m. to 5:30 p.m., April 28, 1987, 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 1800 G Street NW., Room 1243.

Type of meeting: Closed.

Contact person: Mark Abrahamson, Program Director for Sociology or Stanley Presser, Associate Program Director for Sociology, Room 316, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7802.

Summary minutes: May be obtained from the Contact Person at the above address.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in the Sociology Program.

Agenda: Closed: to review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

April 6, 1987.

[FR Doc. 87-7999 Filed 4-9-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-410]

Niagara Mohawk Power Corp.; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commisson) is considering issuance of an amendment to Facility Operating License No. NPF-54 issued to Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation, Central Hudson Gas and Electric Corporation, New York Electric and Gas Corporation, and Long Island Lighting Company (the licensee)[1], for operation of the Nine Mile Point Nuclear Station Unit 2 plant, located in Oswego County, New York.

The amendment would revise the trip setpoint and allowable value for the Main Steamline Isolation Valve (MSIV) closure in Table 2.2.1-1 and to change the valve designations in Table 3.6.1.2-1 and 3.6.3-1. These changes have been requested to support the change from MSIV ball valves to MSIV wye-pattern globe valves.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment 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 or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination is provided below.

The proposed changes to the MSIV closure setpoints will not involve a significant increase in the probability or consequences of an accident previously evaluated because these changes have no effect on the outcome of the limiting

[1] Niagara Mohawk Power Corporation is authorized to act as agent for the other listed owners and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

accident and transient analyses contained in the FSAR. These analyses include: (1) Closure of all main steam isolation valves with reactor scram via position switch signals to the reactor protection system (RPS); (2) steam line break outside containment; and (3) loss of plant instrument or services air. The worst case overpressurization transient, MSIV closure with flux scram, was not affected since failure of direct position scram was assumed, and this is not affected by the MSIV closure setpoint.

The proposed changes to the MSIV closure setpoints do not create the possibility of a new or different kind of accident from any accident previously evaluated because these changes are required for the wye-pattern globe valves to perform the equivalent function as the previously installed ball valves. This is because of physical differences in the two types of valves.

The proposed changes to the MSIV closure setpoints will not involve a significant reduction in a margin of safety because the effect on transients of a delayed scram signal resulting from the new trip setpoints has been evaluated by the licensee and only two transient analyses which assme this scram function were identified. These are the manual closure of all main steam isolation valves and the pressure regulator controller failure. Of these two events, the manual closure is more limiting. The licensee determined that the resulting change in the critical power ratio (CPR) operating limit as defined in Section 2.0 of the Technical Specifications is the only parameter affected for these events and that change is insignificant.

The changes to the valve designations on Tables 3.6.1.2–1 of the Technical Specifications reflect the change from ball valves to wye-pattern globe valves.

(1) These proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the licensee has reviewed the effect of this change on transient and accident analyses and determined there are no changes required to these analyses as result of the change to the wye-pattern globe valves.

(2) These proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The licensee has stated these valves will meet the same design criteria and commitments in the FSAR which were applicable to the MSIV ball valves. These include seismic and environmental qualifications, ASME Code class, the requirements in IEEE 279, inservice inspection and quality assurance requirements, stress analysis design and commitments, jet impingement design requirements and heavy load evaluations. These valves will also undergo preoperational and startup testing in accordance with FSAR and, as discussed above, will perform a function equivalent to the previously installed ball valves. In addition, the MSIV closure time (3 to 5 seconds) and leakage criteria (less than or equal to 6 SCFH) will remain the same.

The MSIV wye-pattern globe valves require pneumatic assistance to close within technical specification time limits. The pneumatic accumulators and associated piping and check valves are safety-related. A failure in one of these lines could affect the ability of an MSIV to close within technical specification time requirements, but it would not affect the closure time of the redundant MSIV. Failure of one MSIV to close has already been considered and therefore is not a new or different kind of accident.

(3) These proposed changes do not involve a significant reduction in a margin of safety. Inasmuch as the leakage rate remains unchanged from that analyzed in the FSAR and the Safety Evaluation Report, the change from ball to wye-pattern globe valves will not increase the dose consequences. The licensee has also stated the effect of the change to wye-pattern globe valves on the diesel generator and power distribution systems is negligible.

The licensee evaluated the changes in the margins of safety for the change from the ball to the wye-pattern globe valves and identified the following reductions in the margins of safety:

(a) The calculated increases in the final peak clad temperature (PCT) is about 1°F for the most limiting large break and 2°F for small breaks. These changes are not significant changes to the margins of 278°F and 476°F, respectively.

(b) The calculated peak vessel pressure has also changed frm 1268 psi to 1271 psi compared to an allowable of 1375 psi. This change in margin is also not significant.

The Commission is seeking public comments on this proposed determination. Any comments reviewed 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 Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By May 11, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license 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. Requests 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 pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for 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-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel (Bethesda), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006, 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 Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the 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 amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Room, Penfield Library, State University College, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 7th day of April 1987.

For the Nuclear Regulatory Commission.

Anthony Bournia,

Acting Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 87–8068 Filed 4–9–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Agency Information Collection Activities Under OMB Review; Request for Extension of SF 2808 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35), this notice announces a request to extend a public information collection previously cleared by the Office of Management and Budget. SF 2808, Designation of Beneficiary Under the Civil Service Retirement System, is completed by Federal employees and annuitants to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement System in the event of death. There are 2,000 individuals who respond annually for a total public burden of 500 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATES: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Stret, NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–8099 Filed 4–9–87; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24303; File No. SR–Amex–86–24]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

On September 24, 1986, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the number of traders of non-equity options on the Exchange floor. The Amex proposed to implement this increase by adopting a Limited Trading Permits Plan ("Plan") which would allow the Exchange to issue up to 36 trading permits.

The proposal was noticed in Securities Exchange Act Release No. 23702 (October 10, 1986), 51 FR 37802 (October 24, 1986). The Commission received two comment letters regarding

[1] 5 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1986).

the proposal from the Chicago Board Options Exchange, Inc. ("CBOE"), and a letter from the Amex clarifying certain aspects of the proposal. The substance of these letters is discussed in detail below.

I. Description of the Proposal

The Plan provides for the creation of 36 Limited Trading Permits ("LTPs") which enable a holder to trade any Amex options product other than individual stock options.[3] In order to ensure that the Amex's Institutional Index ("XII") option, a relatively new index product, attracts sufficient market makers to provide a deep and liquid market, the Plan requires that one-third of an LTP holder's total trading activity (calculated on a quarterly basis on the number of contracts traded) be in XII.[4]

To implement the Plan, the proposal provides that each Amex regular and options principal member be issued one right to obtain 1/24 th of an LTP,[5] which right will be valid for 30 days from the date of issuance. During this period, the rights may be traded freely in an Exchange administered auction market, similar to the current seat market, or they may be traded privately. At the end of the 30 day offering period any options rights which have not been exchanged for an LTP will expire.

In order to acquire an LTP, a person must obtain 24 rights during the offering period,[6] pay the first installment of an initial Exchange fee, and file with the Exchange an application for approval of the LTP within 30 days of the end of the rights offering.[7] An LTP may be transferred at any time upon approval by the Exchange of the transferee and upon payment of applicable initiation and processing fees. An LTP also may be leased at any time pursuant to a special transfer agreement. If an LTP is not renewed annually by payment of the applicable fee, it will expire and cannot be reissued.

LTP holders may not participate in any distribution of the assets of the Exchange on dissolution or liquidation, nor may they vote in elections for Governors or on changes to the Constitution. In addition, they are prohibited from participating in the Gratuity Fund. In all other respects, LTP holders will be subject to the duties and obligations of members of the Exchange.

The Amex states in its rule filing that a number of factors prompted it to propose the LTP Plan to increase the Exchange's floor trading capability in non-equity options products. First, the Amex anticipates that traders who formerly held Options Trading Permits ("OTPs") and concentrated their trading activity in XMI,[8] will spend less of their time in the XMI crowd in the future because they are now entitled to trade individual stock options. Second, the Exchange believes that its recently introduced broad-based index, the XII,[9] needs additional traders to foster market depth and liquidity. Third, the Amex is considering other new options products which could potentially add to the need for more floor traders.

II. Summary of Comments

The Commission received two comment letters from the CBOE concerning the Amex's proposed LTP Plan. The CBOE's initial letter,[10] dated November 14, 1986, expressed the opinion that the Plan was inconsistent with a 1977 Commission release on options floor trading,[11] because it would induce LTP holders to engage in riskless or pre-arranged proprietary trades in order to meet the Plan's one-third XII trading activity requirement ("one-third requirement"). The CBOE stated that LTP holders would be primarily interested in trading the Amex's XMI option, and would effect proprietary trades in XII principally to comply with the one-third requirement.[12] The CBOE argued that increased proprietary XII trading by LTP holders, effected without a concommittent increase in public customer order flow, would present a false appearance of increased public interest in the option. This activity could inappropriately induce XII options trading by other individuals, and divert public order flow from other exchanges' index options to XII.[13]

In response to the CBOE's November letter, the Amex submitted a letter to the Commission in support of the one-third requirement.[14] The Amex expressed the opinion that the Plan as initially formulated, and the Exchange's current surveillance procedures, were adequate to detect trading activity in XII involving riskless or pre-arranged transactions. The Amex also stated that the one-third requirement would, in practice, require an LTP holder to spend at least some significant portion of his time on the floor in the XII crowd, and was intended by the Exchange to encourage LTP holders to provide market making support to a new product.[15]

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[3] Currently, this would include the Amex Major Market Index ("XMI") option, the Institutional Index ("XII") option, and industry group and interest rate options, as well as other new products that may be introduced by the Amex in the future.

[4] For example, if an LTP holder's total trading actitity in non-individual stock options in one quarter equaled 1,500 contracts, 500 of these contracts would be required to be in XII in order for the holder to meet the trading activity requirements.

[5] In the case of a leased membership, the options right will be issued to the lessor.

[6] To avoid inequitable results in the event one or more members fail to make their rights available for sale, the Exchange is authorized to issue an LTP for fewer than 24 rights if a person, despite good faith efforts, has been unable to buy the necessary number of rights in the market. Such person would be required to pay the Exchange an amount approximating the amount that would have been required to purchase the needed rights had they been for sale. In no event, however, will more than 36 LTPs be issued.

[7] An organization may acquire beneficial ownership of an LTP, but each LTP must be held in the name of an individual who meets the qualifications applicable to options principal members. Nominees holding LTPs owned by a single individual must be associated with that individual in a firm or corporation, and an LTP holder affiliated with a firm or corporation must qualify it as a member organization if it is not already so qualified. Persons or firms acquiring LTPs must initiate activation of the LTP by filing an application with the Exchange within 30 days of the end of the options rights offering. Failure to take such steps would result in forfeiture of the LTP, which would be deemed expired.

[8] In May 1984 the Amex adopted an Option Trading Permits Plan, for the purpose of increasing the number of non-equity options traders on the Exchange floor. *See* File No. SR–Amex–84–13, approved by the Commission in Securities Exchange Act Release No. 21130 (July 10, 1984), 49 FR 29172. The holder of an OTP was entitled to trade non-equity options for his own account for a two year period, after which time the trader could acquire an options principal membership ("OPM") upon payment of an additional fee. A total of 108 permits were issued pursuant to this Plan, and all of these permits were converted into OPMs in September 1986.

[9] The Commission approved the introduction of the XII option in August 1986. *See* Securities Exchange Act Release No. 23573 (August 28, 1986), 51 FR 31859.

[10] Letter to Jonathan G. Katz, Secretary, SEC, from Arne R. Rode, General Counsel, CBOE, dated November 14, 1986.

[11] *See* Securities Exchange Act Release No. 13433 (April 5, 1977), 11 SEC Dock. 2194, wherein the Commission commented on the legality of floor members' proprietary trading in options on MGIC Investment Co. stock. The Commission found that floor members on both the Amex and the CBOE appeared to be substantially increasing their proprietary trading in certain dually traded options in an attempt to induce the purchase or sale of these options on their exchanges instead of other options exchanges on which the same class was traded. The Commission stated that trading activity motivated by this purpose may be inconsistent with the Act. *See* disussion in text *infra*.

[12] The CBOE contended that the majority of XII trades would be proprietary because of the limited public customer business in XII to date. For example, in December 1986, out of a total of 8,608 contracts per day in XII, only 2,231 of these contracts involved public customers.

[13] The CBOE trades an index on the Standard & Poor's 500 ("SPX") which also provides for European settlement and is generally perceived as a direct competitor of XII.

[14] *See* letter to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, from James Duffy, Legal & Regulatory Policy Division, Amex, dated December 23, 1986 ("Amex Letter").

[15] The CBOE submitted a second letter to the Commission, dated January 27 1987, commenting

Continued

III. Trading Activity Requirement

In February 1987, the Amex responded to the concerns raised by the CBOE by proposing to adopt certain procedures in connection with the LTP Plan's one-third trading activity requirement.[16] The procedures require each LTP holder to execute 50% of his XII transactions (calculated quarterly by number of contracts traded) in person, rather than through a broker. Second, the procedures reiterate the Exchange's policy that an options trader's transactions not be effected solely for the purpose of meeting a zone requirement (*i.e.*, the one-third requirement), and state that the Exchange will view as inconsistent with the one-third requirement transactions which appear to constitute an irregular pattern of trading in XII. The procedures specifically cite as inconsistent activity a trader effecting a percentage of trader-to-trader transactions significantly greater than the percentage of trader-to-trader transactions in XII generally.

IV. Discussion

In the past, the Commission has approved proposals to create limited membership classes designed to encourage market maker participation in a new or developing market for an option product.[17] Historically, the commission has taken the position that decisions concerning the implementation and characteristics of a plan designed to increase the number of traders on an exchange floor, were best left to the business judgment of an exchange, as long as the procedures adopted were not inconsistent with the purposes of the Act. Viewed in this context, the LTP Plan appears to be designed for the legitimate business purpose of attracting market makers to non-equity options. Before approving the plan, however, the Commission has had to consider whether the Plan's procedures—most notably the one-third trading activity requirement—would induce pre-arranged or riskless trading by market makers.

The Commission believes that the Plan proposed by the Amex adequately addresses concerns regarding whether the one-third requirement would create an incentive for inappropriate trading activity. The Commission consistently has stated that proprietary floor trading by options traders effected for the purpose of increasing aggregate trading volume in an options class, and thereby inducing the purchase or sale of that class, violates sections 9 and 10 of the Act.[18] While the Plan proposed by the Amex does raise concerns regarding excessive proprietary trading by LTP holders in XII in order to fulfill the one-third requirement, the Commission believes, for the following reasons, that the procedures adopted by Amex will decrease substantially the potential for trading abuses in XII.

First, the procedures adopted by Amex require, for purposes of the one-third requirement, that an LTP holder execute in person, rather than through a broker, 50% of his XII transactions. This requirement is intended to ensure that LTP holders spend significant time in the XII crowd in order to fulfill the one-third requirement. The Commission believes that this physical presence requirement should dissuade LTP holders from attempting to meet the one-third requirement without contributing to the maintenance of a liquid market in XII.

Second, the Amex procedures clearly state that an LTP holder's transactions may not be effected solely for the purpose of meeting a zone requirement, and that the Exchange will view as inconsistent with the one-third requirement "transactions of a trader which appear to constitute an irregular pattern of trading in XII."[19] Specifically, the Plan's procedures require the Amex to view as inconsistent with this requirement market maker-to-market maker transactions of a percentage significantly greater than the percentage of such transactions in XII generally. The Commission believes that this provision should ensure that LTP holders do not engage in trading which is motivated by non-economic considerations, and that LTP holders' trading in part be effected to accomodate public customer orders.

Third, the Exchange is obligated to surveil trading in XII by LTP holders generally, and with a particular focus on proprietary trading. In this regard the Amex has in place procedures to monitor options trading and ensure that LTP holders' trading in XII is done for the purpose of contributing to the maintenance of a fair and orderly market, and not solely to fulfill the one-third requirement.[20] The Exchange will refer transactions which appear to have been riskless to its Floor Performance Committee, which is authorized to impose penalties if it determines that transactions were inconsistent with an LTP's responsibilities. Trading violations also my be referred to the Amex's Compliance Division for appropriate disciplinary action. In addition, the Exchange will issue a circular to LTP holders advising them that transactions which are inconsistent with their market making responsibilities will not be counted toward meeting their one-third requirement. In this regard, it will not be necessary for the Amex to prove that a market maker's XII trades were prearranged or executed in order to artificially increase the appearance of activity in the option, but rather that a market maker's relative lack of trading with public customer orders evidenced a failure to comply with the trader's market making responsibilities. The Commission expects the Amex agressively to discipline any market maker whose percentage of transactions with other market makers in XII significantly exceeds the percentage of such transactions in XII generally.

V. Conclusion

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[21] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[22] that the proposed rule change is approved.

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that absent an in-person trading requirement, nothing in the LTP Plan would prevent permit holders from effecting their XII trades through the use of orders entered with floor brokers or other market makers. The CBOE stated that because trading activity would be measured in terms of contract volume rather than number of transactions, the one-third requirement also could be satisfied by a few large transactions initiated in-person. *See* letter to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, from Arne R. Rode, General Counsel, CBOE, dated January 27, 1987.

[16] *See* letter to Brandon Becker, Associate Director, Division of Market Regulation, SEC, from Paul Stevens, Executive Vice President—Operations, Amex, dated February 24, 1987.

[17] *See* note 8, *supra*. The issuance of OTPs by the Amex was intended to encourage trader participation in Exchange-traded option products other than individual stock options, particularly XMI.

[18] Securities Exchange Act Release No. 13433, *supra* note 11. Trading activity of this nature is particularly harmful where competition exists between markets for functionally similar products, such as broad-based stock index options. In addition, such trading may be viewed as inconsistent with a market maker's obligation under section 11(b) of the Act, and Rule 11b–1 thereunder. *See* Securities Exchange Act Release No. 17574 (February 25, 1981), 46 FR 15134.

[19] Amex Rule 958 prohibits an Amex Registered Trader from entering into transactions that are inconsistent with a course of dealings "reasonably calculated to contribute to the maintenance of a fair and orderly market."

[20] *See* Amex Letter, *supra* note 14, at 7.

[21] 15 U.S.C. 78f (1982).

[22] 15 U.S.C. 78s(b)(2) (1982).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Dated: April 6, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-8029 Filed 4-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24302; File No. SR-OCC-87-4]

Self-Regulatory Organizations; Options Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on March 13, 1987, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described below. The proposal allows OCC clearing members to pledge positions in individual non-proprietary market-maker accounts. The Commission is publishing notice to solicit comment on the rule change.

The proposal amends OCC's rules and Pledge Account Agreement to enable clearing members to pledge long options positions in individual non-proprietary market-maker accounts. OCC rules allow clearing members to establish and maintain pledge accounts. Each pledge account must be associated with a primary account of the clearing member. Until recently, systems constraints at pledgee banks required the pledge account to be associated with he clearing member's proprietary market-maker or specialist account or a combined market-maker or specialist account. OCC has been advised that the constraint no longer exists at OCC's pledgee banks and is adjusting its rules to allow pledge accounts associated with individual non-proprietary market-maker or specialist accounts. OCC states the proposal will make individual non-proprietary market-maker positions available for collateralization and, as a result, will lower clearing members' borrowing costs and facilitate financing.

This rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

You may submit written comments within 21 days after notice is published in the **Federal Register**. Please file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-87-4 and should be submitted by May 1, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-8028 Filed 4-9-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-16539]

Application and Opportunity for Hearing; American Southwest Finance Co., Inc.; Correction

April 6, 1987.

This document corrects a notice published in the March 25, 1987 issue of the **Federal Register** (52 FR 9597) FR Doc. 87-6496 as follows:

1. The name of the company in the heading and in the introductory phrase of the document is corrected to read "American Southwest Finance Co., Inc."

2. In the next to the last paragraph of the document the date for requesting a hearing is corrected to read "April 24, 1987."

Jonathan G. Katz,

Secretary.

[FR Doc. 87-8029 Filed 4-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24297; File No. SR-NASD-87-10]

Self-Regulatory Organizations; Proposed Rule Change; National Association of Securities Dealers, Inc.; Relating to Buy-ins of Short Securities Positions

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 6, 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 Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends section 59 of the NASD Uniform Practice Code to require buy-ins for cash or guaranteed delivery for NASDAQ securities (where the buyer is a customer other than another NASD member) upon the failure of a clearing corporation to effect delivery pursuant to a buy-in notice.

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

The proposed rule change was considered by the NASD as a result of the study of short sales in the NASDAQ market conducted on behalf of the NASD in early 1986.

One of the areas examined in the short-sale study was the relationship between short selling and clearing

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[23] 17 CFR 200.30-3(a)(12) (1986).

corporation short interest (fails to deliver), as evidenced by the inability to deliver or election by a clearing participant to withhold delivery of securities to the clearing corporation. The short condition can exist indefinitely in a continuous net settlement system because the rules and procedures of the clearing corporations permit outstanding long or short positions to be carried forward on an ongoing basis. Clearing corporation procedures provide that open positions are marked to the market daily, with market price fluctuations being reflected in a participant's daily cash settlement. This effectively insulates both the clearing corporation and broker-dealer participants from financial losses.

A problem revealed by the short-sale study concerned instances in which a long clearing-broker did not receive securities from a clearing corporation, especially in situations where there were high levels of short selling in conjunction with large amounts of clearing-short interest. In some circumstances, when a long clearing-broker initiated a buy-in, it was retransmitted to a short clearing-broker who was also a short seller and thereby unable to satisfy the request for certificates.

The proposed rule change would cure this problem for transactions in NASDAQ securities where the buyer is a public customer. Under the provisions of the amendment, upon a failure of a clearing corporation to make delivery of securities, members will be required to close the contract by purchasing for cash or guaranteed delivery any portion of the securities not delivered through the clearing corporation buy-in process. The NASD believes that this provision will eliminate the problems of non-delivery found to exist in the short-sale study.

The NASD believes that the propsed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and protect investors and the public interest. The proposed rule change will facilitate customer's ability to obtain delivery of securities and should aid in preventing short-sale abuses in the NASDAQ marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition 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

The NASD solicited comments from members regarding the proposed rule change in Notice to Members 86–59. A total of 17 responses were received. Copies of the Notice to Members and Comment letters have been submitted to the Commission as Exhibit 2 to this filing. The most frequent area of comment related to the impact of the rule on utilization of warrants as a method of capital raising and the arbitrage of positions in those warrants. The NASD Board of Governors considered the comments and made several changes to the proposals based upon such review. The NASD responded to these and other comments in the filing with the Commission.

III. Dates of Effectiveness of the Proposed Rule Change in Timing of 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 reason 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, 450 Fifth Street, NW., Washington, DC 20549. 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 SR–NASD–87–10 and should be submitted by May 1, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 3, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–8026 Filed 4–9–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87–4–5; Dockets 32608 and 39229]

Proposed Revocation of the Section 401 Certificates of Trans Global Airlines, Inc.; Order To Show Cause

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders revoking the certificates of Trans Global Airlines, Inc., issued under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than April 20, 1987.

ADDRESSES: Responses should be filed in Dockets 32608 and 39229 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590, and should be served on the parties lised in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Janet A. Davis, Air Carrier Fitness Division, P–56, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–2341.

Dated: April 2, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–8100 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[AC No. 145–4A]

Proposed Advisory Circular—Inspection, Retread, Repair, and Alterations of Aircraft Tires

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed Advisory Circular (AC) 145–

4A, Inspection, Retread, Repair, and Alterations of Aircraft Tires.

SUMMARY: The proposed AC 145–4A provides changes to AC 145–4 guidelines for acceptable practices regarding qualification of retreaders to make tire sidewall repairs one-ply deep, improved tire bead inspection, information related to upper service limits for retreaded tires, and minor editorial changes.

DATE: Comments must be received on or before May 26, 1987.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: General Aviation and Commercial Branch, AFS–340, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Angelo R. Mastrullo, Aviation Safety Inspector (AFS–340), at the above address, telephone: (202) 267–3805.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the proposed AC may be obtained by contacting the person named above under "For Further Information Contact." Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments they may desire. Comments should be identified as pertaining to AC 145–4A and submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the General Aviation and Commercial Branch before issuing the final AC.

Background

Under the present acceptable practices regarding high speed (operated above 120 mph) aircraft tire repairs outlined in the present AC 145–4, damage to a tire sidewall that penetrates the tire's outer ply is not repairable. Two aircraft tire retreaders have requested FAA to reconsider that restriction and allow for limited repairs to be made to tire sidewalls down to the outermost ply. The retreaders maintain that the present acceptable repair practices have resulted in the rejection of numerous valuable aircraft tires that, except for the slight damage pentrating into the outermost ply of the sidewall, could be safely repaired and retreaded. In response to this concern, this proposed AC contains new quidelines for repairs to sidewall rubber of tires designed for operation above 120 mph. In the interim, retreaders who desire to make such repairs should subject the repaired and retreaded tire to the dynamic test requirements of paragraph 7 in AC 145–4. One retreader satisfactorily completed such testing and has been given interim authorization to make such repairs in accordance with the new guidelines outlined in proposed AC 145–4A.

The proposed AC also contains improved tire bead inspection guidelines, information related to an upper service limit for retreading tires, and minor editorial changes.

Both AC 145–4 and proposed AC 145–4A were developed by the FAA using input from the tire and airline industries concerning development, qualification, and approval of aircraft tire repair and retread process specifications, and the use of special nondestructive inspection (NDI) techniques. The FAA believes it is necessary to afford those persons and any other interested party an opportunity to comment on the proposed AC 145–4A.

Issued in Washington, DC, on March 30, 1987.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 87–7985 Filed 4–9–87; 8:45 am]

BILLING CODE 4910–13–M

Airport Noise Compatibility Program; Scottsdale Municipal Airport, Scottsdale, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the city of Scottsdale, Arizona, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 7, 1986, the FAA determined that the noise exposure maps submitted by the city of Scottsdale under Part 150 were in compliance with applicable requirements. On December 19, 1986, the Administrator approved the "Scottsdale Municipal Airport Noise Compatibility Program." Most of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the "Scottsdale Municipal Airport Noise Compatibility Program," is December 19, 1986.

FOR FURTHER INFORMATION CONTACT: Herbert W. Hyatt, Environmental Protection Specialist, AWP–611.2, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, (213) 297–1534. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the "Scottsdale Municipal Airport Noise Compatibility Program", effective December 19, 1986.

Under section 104 (a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor, with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and ASNA, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and

responsibilities of the Administrator, prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action, or approval to implement specific noise compatibility measures, may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program, nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports Division, in Los Angeles, California.

The city of Scottdale, Arizona submitted to the FAA on June 19, 1985, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 1984 through January 1986. The city of Scottsdale, Arizona Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on February 7, 1986. Notice of this determination was published in the **Federal Register** on March 7, 1986.

The Scottsdale Municipal Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion through the year 2000. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 26, 1986, and was requied by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained fourteen propose actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore was approve by the Administrator, effective December 19, 1986.

Outright approval was granted for twelve of the fourteen specific program elements. Two measures: (1) FAR Part 36 stage 2 compliance for use of Runway 21 for landings and Runway 3 for departures, and (2) right turns for noise abatement as soon as practical when departing Runway 21, are disapproved for safety reasons.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 19, 1986. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administative offices of the city of Scottsdale, Arizona.

Issued in Hawthorne, California, on March 13, 1987.

Herman C. Bliss,

Manager, Airports Division FAA, Western-Pacific Region.

[FR Doc. 87-7986 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 150; Minimum System Performance Standards for Vertical Separation Above Flight Level 290; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 150 on Minimum System Performance Standards for Vertical Separation above Flight Level 290 to be held on May 6-8, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) approval of the minutes of the Fourteenth Meeting; (3) report of working group activities; (4) update on Data Collection Programs; (5) continued development of MSPS; (6) task assignments; (7) other business; and (8) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 6, 1987.

Wendie F. Chapman,

Designated Officer.

[FR Doc. 87-7977 Filed 4-9-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1986 Rev., Supp. No. 16]

Surety Companies Acceptable on Federal Bonds: Termination of Authority; Public Service Mutual Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Public Service Mutual Insurance Company, under the United States Code, Title 31, sections 9304 through 9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 51 FR 23948, July 1, 1986.

With respect to any bonds currently in force with Public Service Mutual Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2119.

Dated: March 27, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87-7975 Filed 4-9-87; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 69
Friday, April 10, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10:00 a.m., Wednesday, April 15, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed revisions to the Board's Regulation F (Securities of State Member Banks).

Discussion Agenda

2. Publication for comment of a proposed amendment to Regulation T (Credit by Brokers and Dealers) to revise the definition of OTC margin bonds to include mortgage related securities.

3. Proposals regarding fees for examinations of Edge Act corporations, inspections of bank holding companies, and processing applications for banks and bank holding companies. (Proposed earlier for public comment; Docket No. R-0584)

4. Proposed revisions to the Board's Rules Regarding Availability of Information.

5. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: April 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-8731 Filed 4-8-87; 11:04 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: Approximately 11:00 a.m., Wednesday, April 15, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 8, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-8130 Filed 4-8-87; 11:04 am]

BILLING CODE 6210-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, April 15, 1987, 10:00 a.m.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

State/Local Programs: Update

The staff will brief the Commission on the fiscal year 1987 state and local cooperative programs. State and local officials will participate.[1]

For a recorded message containing the latest agenda information, call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

April 8, 1987.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 87-8149 Filed 4-8-87; 12:27 pm]

BILLING CODE 6355-01-M

[1] For this meeting, the Commission has voted to waive its policy prohibiting participation by outside parties in Commission meetings.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 10:00 am (Eastern Time) Monday, April 20, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. Report on Commission Operations (Optional)
3. Amendments to EEOC Freedom of Information Act Regulations

Closed

1. Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634-6748 at all times for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634-6748.

Dated and issued: April 8, 1987.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 87-8203 Filed 4-8-87; 3:59 pm]

BILLING CODE 6750-06-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 the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, April 14, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of Previous Meetings

Application for Consent To Purchase Assets and Assume Liabilities

The Cortland Savings and Banking Company, Cortland, Ohio, an insured State member bank, for consent to purchase assets of and assume the liability to pay deposits made in the Mantua, Ohio, branch of First Nationwide Bank, a Federal Savings Bank, San Francisco, California, a non-FDIC-insured institution.

Application for Consent To Purchase Assets and Assume Liabilities and for Consent To Merge and Establish Branches

The Savings & Trust Company of Pennsylvania, Indiana, Pennsylvania, an insured State nonmember bank, for consent to purchase the assets of and assume the liabilities of Union Bancorp of Du Bois, Pennsylvania, Inc., Du Bois, Pennsylvania, for consent to merge, under its charter and title, with The Union Banking & Trust Company of Du Bois, Pennsylvania, Du Bois, Pennsylvania, and for consent to establish the four offices of The Union Banking & Trust Company of Du Bois, Pennsylvania as branches of the resultant bank.

Ratification of an Approval of an Application for Consent to Merge and Establish One Branch

Citizens Bank & Trust Company, Eastman, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with Williams Banking Company, Rhine, Georgia, and for consent to establish the sole office of Williams Banking Company as a branch of the resultant bank.

Reports of Committee and Officers

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report, December 31, 1986

Discussion Agenda

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 893–3813.

Dated: April 7, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–8151 Filed 4–8–87; 12:27 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 2:30 p.m. on Tuesday, April 14, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Application for consent to purchase assets and assume liabilities and to establish two branches:

Hasting City Bank, Hastings, Michigan, an insured State nonmember Bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Bellevue, Michigan, and Nashville, Michigan, branches of Comerica Bank—Battle Creek, Battle Creek, Michigan, and for consent to establish those two branches of Comerica Bank—Battle Creek as branches of Hastings City Bank.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

This meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: April 7, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–8152 Filed 4–8–87; 12:27 am]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

April 8, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–4109), 5 U.S.C. 552b:

TIME AND DATE: April 15, 1987, Approximately 2:00 (following open Commission meeting).

PLACE: 825 North Capitol Street, NE., Washington, DC 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Docket No. IN84–2–000, Pioneer Production Company.
(2) Fred E. Long, Petroleum Management, Inc., Nue-Wells Pipe Line Company and Southern Gas Pipeline Company.
(3) Stephens Production Company.
(4) Various Producer-Owned Natural Gas Processing Plants.
(5) Project No. 9000 (Morrow Dam), STS Consultants, Ltd.
(6) Project No. 9140 (Elizabethtown Hydro Project), Charles F. Heimerdinger.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87–8177 Filed 4–8–87; 3:29 pm]

BILLING CODE 6717–01–M

Federal Register

Friday
April 10, 1987

Part II

Department of Education

Office of Special Education and Rehabilitation Services

Projects for Initiating Special Recreation Programs for Individuals with Handicaps; Final Annual Funding Priority for Fiscal Year 1987 and Invitation for Applications for New Awards; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitation Services

Projects for Initiating Special Recreation Programs for Individuals With Handicaps

AGENCY: Department of Education.

ACTION: Notice of Final Annual Priority for Fiscal Year 1987.

SUMMARY: The Secretary announces annual funding priority for grants for Initiating Special Recreation Programs for Individuals with Handicaps. The Secretary announces a single priority to support applications for recreation programs which provide individuals with handicaps with the opportunity for contact with non-handicapped peers, other than recreational service personnel, during at least part of the recreational program. The objective of this contact should be the eventual integration of individuals with handicaps into existing community recreational programs which serve non-handicapped persons.

EFFECTIVE DATE: This final annual funding priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this final priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank S. Caracciolo, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, Room 3320, Switzer Building, 400 Maryland Avenue SW., MS 2312, Washington, DC 20202, Telephone: (202) 732–1340.

SUPPLEMENTARY INFORMATION: Grants for Individuals with Handicaps are authorized by section 316 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 777f). Program regulations are established at 34 CFR Part 378. The purpose of the Special Recreation Programs for Individuals with Handicaps is to support projects which initiate recreational activities for individuals with handicaps to aid in their mobility, socialization, independence, and community integration.

Eligible Applicants

State and public or other nonprofit agencies and organizations are eligible to apply for grants under this program.

Funds Available

In FY 1986, $2,105,000 was available to fund twenty-nine one-year projects. In FY 1987, $2,330,000 is available to fund thirty-three projects. Project periods will be for thirty-six months.

Final Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give absolute preference to applicants who propose projects to integrate individuals with handicaps into existing community recreational programs. The purpose of this priority is to support applications which propose to develop exemplary recreational programs that aid individuals with handicaps in their mobility, socialization, independence, and community integration. Specifically, applications under this priority must propose recreational programs which provide the opportunity for individuals with handicaps to have contact with non-handicapped peers, other than recreational service personnel, during at least part of the recreational program. The objective of this contact should be the eventual integration of individuals with handicaps into existing community recreational programs which serve non-handicapped persons. Applicants will be evaluated according to criteria which appear in the program regulations at 34 CFR 378.31.

Summary of Comments and Responses

A Notice of Proposed Annual Funding Priority was published in the **Federal Register** on October 14, 1986 at 51 FR 36591 for Special Recreation Programs for Individuals with Handicaps. Twelve comments were received in response to the notice.

Comment. All twelve of the commenters supported the priority. One of the twelve supporting the priority also requested multi-year funding.

Response. All of the available funding will be used to support this priority. As mandated by the Rehabilitation Act Amendments of 1986, three-year grants will be awarded to projects funded under this program.

Projects to be funded

All funds available under this program in fiscal year 1987 will be used to support project applications submitted in response to this priority.

(Authority 29 U.S.C. 777(f).

(Catalog of Federal Domestic Assistance No. 84.128, Rehabilitation Services—Special Projects)

Dated: March 31, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–8091 Filed 4–9–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.128J]

Inviting Applications for New Awards Under Projects for Initiating Special Recreation Programs for Individuals with Handicaps for Fiscal Year 1987

Purpose: The purpose of this program is to support projects which initiate recreational programs for individuals with handicaps to aid in their mobility, socialization, independence, and community integration.

Deadline for Transmittal of Applications: June 5, 1987.

Applications Available: April 20, 1987.

Available Funds: $2,330,000.

Estimated Range of Awards: $50,000 To $90,000.

Estimated Average Size of Awards: $70,000.

Estimated Number of Awards: 33.

Project Period: 36 months.

Applicable Regulations: (a) Regulations governing projects for Initiating Special Recreation Programs for Individuals Handicaps in 34 CFR Parts 369 and 378, (b) Education Department General Administration Regulations (EDGAR), in 34 CFR Parts 74, 75, 77, and 78; and (c) the Notice of Final Priority published in this issue of the **Federal Register.**

For Applications or Information Contact: Frank S. Caracciolo, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3320 Switzer Building, MS 2312, Washington, DC 20202. Telephone: (202) 732–1340.

Program Authority: 29 U.S.C. 777(f).

Dated: April 6, 1987.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87–8092 Filed 4–9–87; 8 45 am]

BILLING CODE 4000–01–M

federal register

Friday
April 10, 1987

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Neighborhood Development Demonstration Program; Fund Availability for Fiscal Year 1987; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-87-1675; FR-2301]

Neighborhood Development Demonstration Program; Fund Availability for Fiscal Year 1987

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

ACTION: Notice of fund availability.

SUMMARY: Funds have been appropriated for Fiscal Year 1987 for HUD to carry out, for a second round, the Neighborhood Development Demonstration program under section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note). The purpose of this program is to determine the ability of neighborhood organizations to support eligible neighborhood development activities using cooperative efforts and monetary contributions from individuals, businesses, and non-profit and other organizations located within established neighborhood boundaries. The Federal funds are incentive funds to promote the development of this concept, and to encourage neighborhood organizations to become more self-sufficient in their development activities. Up to 30 percent of previous participants in this program may be selected to participate in the second round of the demonstration; the remainder will be selected from among new applicants. All applicants, including previous participants, are to compete through the same selection process.

DATES: Effective April 10, 1987.

Application due date: Applications are due by July 9, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin W. Gunn, Office of Procurement and Contracts, Community Services Division (ACC-MG), Department of Housing and Urban Development, Room 5252, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755-5662. (This is not a toll-free number.) (Use this mailing address to obtain copies of the Request for Grant Applications, which provides further information on the Demonstration. See Part IV of this Notice.)

SUPPLEMENTARY INFORMATION:

This document (1) notifies the public of the availability of funds for the Demonstration; (2) identifies the objectives of the program; (3) describes the method of allocation and distribution of funds; (4) defines eligible neighborhood development organizations; (5) sets forth eligible neighborhood development activities; (6) sets forth application requirements for the funds; (7) identifies the selection criteria for the award of funds; and (8) specifies grantee reporting requirements.

Before requesting a grant application package as provided for under Part IV, organizations should carefully review this notice, particularly the eligibility factors under Part III. Many organizations that spent time and effort preparing applications for first round assistance were determined to be ineligible under the statutory requirements.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

The information collection requirements contained in this Notice have been approved by OMB and the assigned OMB control number is 2535-0084.

Notice of Fund Availability

I. Background

A. Legislation

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181) authorized the Neighborhood Development Demonstration program. The report of the Senate Committee on Banking, Housing, and Urban Affairs referred to the new authority as a:

> Demonstration Program to assist neighborhood organizations to carry out community development activities through an innovative matching grant mechanism. Designed to encourage greater financial self-sufficiency on the part of non-profit neighborhood development groups, the program would provide federal matching funds of up to $50,000 per organization on the basis of charitable contributions which organizations raise from individuals, businesses, and religious institutions in their areas. Different matching ratios would be established for participating organizations based upon the size and economic condition of the community in which those organizations operate, although the ratio could not be lower than 50/50. S. Rep. No. 142, 98th Cong., 1st Sess. 29 (1983).

For Fiscal Year 1987, Congress appropriated [1] $2 million to fund the program. HUD may use no more than five percent of this amount for HUD administrative or other expenses in connection with the demonstration. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, and non-profit and other organizations located within established neighborhood boundaries. Federal payments will be made on a quarterly basis, beginning with the first quarter of the one-year period, as neighborhood organizations report and verify the amount of funds raised from private sector sources during the previous quarter.

B. Program Objectives

The Neighborhood Development Demonstration program is designed to determine the ability of neighborhood organizations to fund and implement neighborhood development activities, using cooperative efforts and monetary support from individuals, businesses and non-profit and other organizations located within the neighborhood boundaries. The Federal matching funds are incentive funds to promote the development of this concept and to encourage neighborhood organizations to become more self-sufficient in their development activities.

The Neighborhood Development Demonstration program has the following objectives:

—To evaluate the degree to which new monetary contributions and other private sector support can be generated and new activities undertaken at the neighborhood level through Federal incentive funding;

—To determine th correlation, if any, between the demographics of a neighborhood (*i.e.*, the income level of its occupants, the amount of non-residential development, the percent of persons employed, the tenant/homeowner breakdown, the racial/ethnic makeup of the neighborhood, etc.) and the neighborhood organization's ability to raise funds within the neighborhood boundaries;

—To determine the correlation, if any, between the type of neighborhood improvement activities proposed and the success of fund-raising efforts; and

—To determine the correlation, if any, between the characteristics of an

[1] Section 101(g), Pub. L. 99-500 (approved October 18, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986).

organization and the success of its fund-raising efforts.

II. Allocation and Distribution of Funds

The Department proposes to make grants, in the form of matching funds, to eligible neighborhood development organizations. Grantee organizations may receive a maximum of $50,000 in Federal matching funds in a single program year. The amount of Federal matching funds that an organization may receive depends in part upon the amount of monetary contributions raised from within the established neighborhood boundaries in the preceding quarter. *Funds raised from organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, and any in-lieu-of-cash contributions cannot be used to match Federal funds. Such contributions may, however, be used to carry out project activities.* The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a period of one to three years.

Maximum Federal matching ratios are to be established in accordance with the statutorily required "smallest number of households or greatest degree of economic distress" criteria. Subject to the statutory maximum of $50,000.00, the Federal match will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered, and the matching ratio determined, based on application of these two criteria. Applications will be ranked on *each* of the two criteria. Applications best satisfying *either* criterion will be placed in the matching ratio category eligible to receive six Federal dollars for each neighborhood dollar. Applications placed in the other matching ratio categories will receive proportionally less, with those in the matching ratio category least satisfying either test being eligible to receive one Federal dollar for each neighborhood dollar.

Any application selected for the award of Federal funds that proposed a matching funds ratio *in excess* of the ratio HUD determines for it will be offered an award of funds at the HUD-determined ratio. However, any application selected for award that proposed a match *below* the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment will be governed by the amount of verified, qualifying monetary contributions received in the preceding quarter, multiplied by the appropriate matching funds ratio.

III. Eligibility

Note.—Organizations are cautioned that, to avoid wasted effort, they should carefully review the following requirements. Over 39 percent of the 281 applications received in 1984 were ineligible under these statutory requirements.

A. Eligible Neighborhood Development Organizations

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or in general, an organization serving a large area of the city. It must meet all of the following statutory requirements:

(1) The organization must carry out its activities in an area that meets the Urban Development Action Grant Program eligibility requirements for Federal assistance under section 119(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5218) and the Department's implementing regulation at 24 CFR Part 570, Subpart G. These provisions require, among other things, that a neighborhood must be located in a governmental jurisdiction or pocket of poverty that is found to be distressed area and secondly, that the governmental jurisdiction in which an area is located must have demonstrated results in providing housing and employment for low- and moderate-income persons and members of minority groups. The neighborhood organization must be located in an area currently meeting the following distress criteria in order for the neighborhood organization to be able to apply:

(i) A city or an urban county that meets the distress criteria required as a condition for assistance under the Urban Development Action Grant program, under section 119(b)(1) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.452; OR

(ii) An area that has been approved by the Department for assistance under the Urban Development Action Grant Program as a "pocket of poverty" under section 119(b)(2) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.466.

The second test of UDAG eligibility, including housing and equal opportunity requirements, will be applied following receipt of the applications by HUD. In order to be eligible under these criteria, the city or urban county in which the applicant is located must have previously demonstrated results in providing housing for low- and moderate-income persons and in providing equal opportunity in housing and in employment for low- and moderate-income persons and members of minority groups, in accordance with the requirements for assistance under the Urban Development Action Grant Program set forth at section 119(b)(1) of the Housing and Community Development Act of 1974 and the Department's implementing regulations at 24 CFR 570.453.

(2) The organization must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates.

(3) The organization must have conducted business for a least three years before the date of its application.

(4) The organization must be responsible to the residents of the neighborhood it serves, with no less than 51 percent of the members of its governing body being residents of the neighborhood.

(5) The organization must have conducted one or more eligible neighborhood development activities, as defined in Section B below, which primarily benefit low- and moderate-income residents of the neighborhood. For purposes of the preceding sentence, "low- and moderate income residents" means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by HUD, with adjustments for smaller and larger families.

B. Eligible Neighborhood Development Activities

Funds may be used by eligible neighborhood development organizations to develop or carry out a project designed to achieve the following:

(1) Create permanent jobs in the neighborhood;

(2) Establish or expand businesses within the neighborhood;

(3) Develop new housing, rehabilitate existing housing, or manage housing stock within the neighborhood;

(4) Develop delivery mechanisms for essential services that have lasting benefits for the neighborhood, such as Fair Housing counseling services, child

care centers, youth training, or health services; or

(5) Plan, promote, or finance voluntary neighborhood improvement efforts, such as establishing a neighborhood credit union, demolishing abandoned buildings, removing abandoned cars, or establishing an on-going street and alley cleanup program.

C. Equal Opportunity Requirements

The neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(1) The requirements of Title VIII of the Civil Rights Act of 1968; (42 U.S.C. 3601 through 3619) (Fair Housing Act) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 through 6107) and the prohibition against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The requirements of Executive Order 11246 and the regulations issued under the Order at 41 CFR Chapter 60;

(3) The requirements of section 3 of the Housing and Urban Develpment Act 1968, 12 U.S.C. 1701u (see § 570.607(b) of this Chapter); and

(4) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

D. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth above, grantees must comply with the following requirements:

(1) Ineligible Contractors

The provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(2) Flood Insurance

No site proposed on which renovation, major rehabilitation, or conversion of a building is to be assisted under this part may be located in an area that has been identified by the Federal Emergency Management Agency [FEMA] as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59 through 79) or less than a year has passed since FEMA notification regarding such hazards, and the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*)

(3) Lead-based Paint

The requirements, as applicable, of the Lead-Based Paint Poisioning Prevention Act (42 U.S.C. 4821 through 4846) and implementing regulations at 24 CFR Part 35.

(4) Applicability of OMB Circulars

The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122, with respect to the acceptance and use of assistance by private nonprofit organizations.

IV. Application Process

A. Application Requirements

(1) There are three steps in the application submission process:

(i) Organizations must determine first whether they are in an area or pocket of poverty currently eligible for assistance under the Urban Development Action Grant (UDAG) program. Organizations that are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress which are used in determining which cities and urban counties are potentially eligible applicants under the Urban Development Action Grant program are advised to consult two notices published by the Department in the **Federal Register** entitled, "Urban Development Action Grant; Revised Minimum Standards for Small Cities" (50 FR 42822, October 22, 1985) and "Urban Development Action Grant; Revised Minimum Standards for Large Cities and Urban Counties" (51 FR 5413, February 13, 1986). These notices identify, among other things (1) the most current minimum standards of physical and economic distress for cities and urban counties and (2) those cities and urban counties that currently meet the minimum standards. In addition, it is possible for an applicant to be eligible on the basis of its neighborhood's being located in a "pocket of poverty." See 24 CFR 570.466. Organizations that need further help in determining their eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). The city or county community development office serving a neighborhood organization should be able to provide the HUD Field Office contact number if assistance is needed. If unable to obtain a local contact, the HUD Headquarters contact for both UDAG and Neighborhood Development Demonstration programmatic information is Mrs. Joyce Walther, telephone number (202) 755–5662. (This is not a toll-free number.)

(ii) Organizations in an area that is eligible for funding under the UDAG program that wish to apply must send a request in writing, with two self-addressed labels, for a "Request for Grant Application" (RFGA) package from Mr. Melvin Gunn in the HUD Office of Procurement and Contracts, as identified under "**FOR FURTHER INFORMATION CONTACT**". The RFGA contains the forms and other information regarding the administration of the demonstration, including relevant provisions from OMB Circulars A–110 and A–122. (This Notice of Fund Availability summarizes major provisions of the RFGA.)

(iii) An original and three copies of an application must be submitted to the address stated under "**FOR FURTHER INFORMATION CONTACT**" earlier in this notice to initiate the application review process. HUD will accept only one application per neighborhood organization.

(2) Each application must contain the following, as required by the Request for Grant Application:

(i) A transmittal letter, a table of contents referenced to numbered pages, and Standard Form SF–424;

(ii) An abstract describing, among other things, the applicant and its achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

(iii) A completed fact sheet that lists neighborhood and organizational characteristics contained elsewhere in the application narrative;

(iv) Evidence that the applicant meets eligibility and other criteria, including the following:

—A legible map, with street names, from the city community development or planning office delineating the applicant's neighborhood. Census tract, block or enumeration district references and zip code references

must also be delineated on the map or on other maps submitted;

—A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;

—The size of the neighborhood population, including the number of low- and moderate-income persons and the size of the minority population, broken down by its ethnic composition.

—A list of the names of the neighborhood organization's governing body members and their addresses (with zip codes), noting those who reside, and (separately) those who conduct business, in the neighborhood.

—A statement of the percentage of the members of the neighborhood organization who are neighborhood residents, the percentage of neighborhood residents who conduct business in the neighborhood, and the percentage of neighborhood businesses conducted by nonresidents;

—Identification of the applicant organization's past and current neighborhood projects, including those eligible as neighborhood development activities as defined under paragraph III B;

—A description of the means by which the governing body members account to the residents of the neighborhood, including the method and frequency of selection of members of the governing body, the consultation process, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (*i.e.*, a breakdown by tenants, homeowners, race, sex, ethnic composition, etc.);

—Evidence of the applicant's sound financial management, determined from its financial statements or audits;

—A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are not inconsistent with the government's housing and community development plans. (In lieu of this certification, evidence may be presented that the local government did not respond within 30 days of the organization's request for such a letter); and

—A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

(v) A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

(vi) A project management plan, including a schedule of tasks for both fund raising and project implementation; and

(vii) A project budget and budget narrative.

V. Selection Criteria for Award of Funds

Applications will be evaluated on the basis of the Factors for Award outlined below:

A. Neighborhood/Organizational Qualifications

(1) The degree of economic distress within the neighborhood;

(2) The extent of neighborhood participation in the proposed activities, as indicated by the proportion of the households and businesses in the neighborhood involved that are members of the eligible neighborhood development organization;

(3) The record of demonstrated measurable achievements in one or more of the activities specified under III B, including benefits to low- and moderate-income residents, plus evidence of promoting fair housing activities, if the applicant has previously sponsored projects involving housing; and

(4) The extent to which the governing body of the organization reflects the demographics of the neighborhood.

B. Project Qualifications

(1) The extent of monetary contributions available that are to be matched with Federal funds, supported by reasonable evidence that private funding sources within the neighborhood have been realistically identified. (HUD will waive the scoring under this provision and assign full points in the case of an application submitted by a small eligible organization, an application involving activities in a very low income neighborhood, or an application that is especially meritorious);

(2) The extent to which a strategy has been developed for achieving greater long term private sector support;

(3) The extent to which the proposed activities will benefit persons of low and moderate income, including promotion of equal employment and fair housing objectives. If emphasis is to be placed on economic development, low and moderate income relationships should be described; and

(4) The quality of the management plan submitted for accomplishing one or more of the activities specified under III B, including evidence of sound financial management of organizational activities, the experience and capability of the organization's director and staff and coordination efforts involved, including working relationships with local government when applicable.

VI. Reporting Requirements

In addition to complying with relevant provisions of OMB circulars A–110 and A–122, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the demonstration, such as changes in the governing body membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of matching funds. Grantees must certify that none of the monetary contributions originated through Federal funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the demonstration, and a report on successful projects that will be distributed to other neighborhood organizations.

VII. Environmental Reviews

For all proposed actions or activities that are not considered a categorical exclusion as set forth in 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the

National Environmental Policy Act (NEPA). Whether the action or activity is categorically excluded from NEPA review or not, HUD will comply also with other appropriate requirements of environmental statutes, executive orders, and HUD standards listed in 24 CFR 50.4. The environmental reviews will be performed before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

Authority: Sec. 123, Housing and Urban-Rural Recovery Act of of 1983 (Pub. L. 98-181); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C 3535(d)).

Dated: April 2, 1987.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 87-8103 Filed 4-9-87; 8:45 am]

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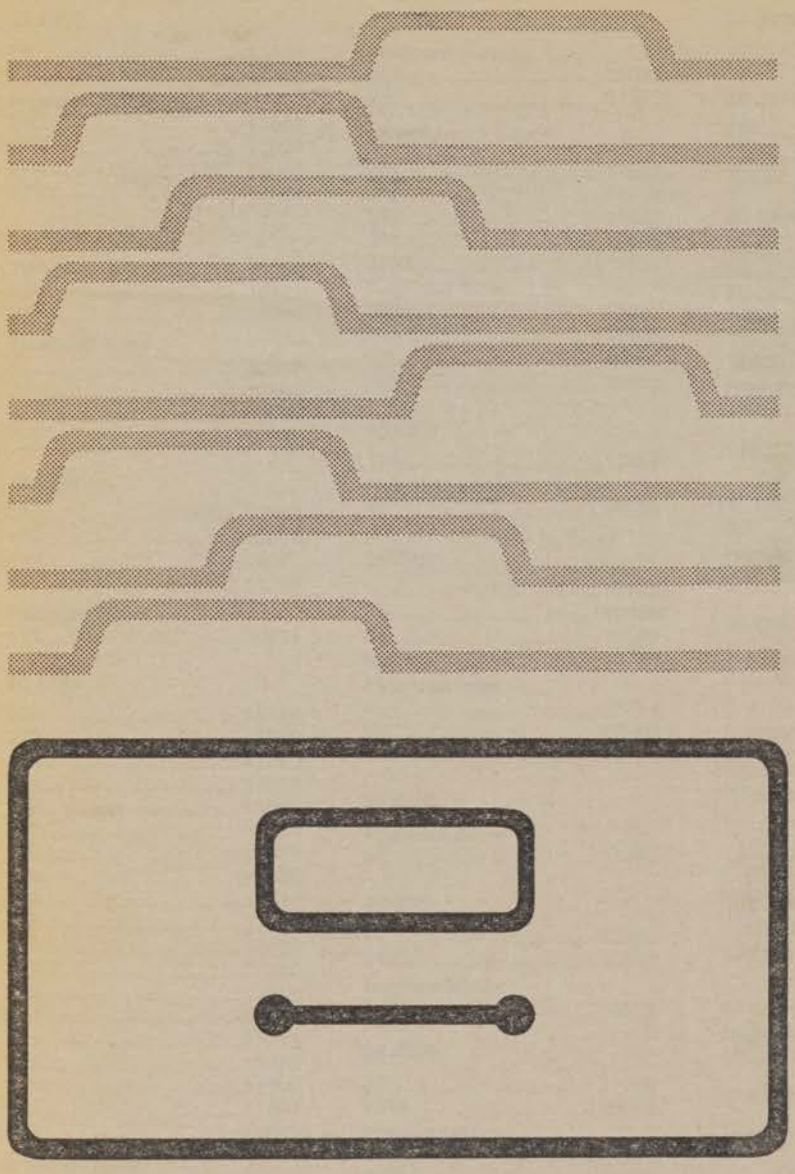

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