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Monday
May 11, 1987

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

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: June 9, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Gertrude E. Belton, 202-523-5237

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Presidential Documents

Title 3—

The President

Executive Order 12596 of May 7, 1987

Noncompetitive Conversion to Career Status of Certain Employees in Professional and Administrative Career Positions

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5 of the United States Code, it is hereby ordered as follows:

Section 1. An individual who is employed in a Professional or Administrative Career position under Schedule B under the authority of 5 C.F.R. 213.3202(l) may be converted noncompetitively to a career or career-conditional appointment at GS–9, provided the individual meets the qualifications and other requirements established by the Director of the Office of Personnel Management, and further provided the individual's performance is determined by the employing agency, in a careful and formal evaluation, to warrant such conversion at GS–9.

Sec. 2. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this Order.

Ronald Reagan

THE WHITE HOUSE,
May 7, 1987.

[FR Doc. 87–10883
Filed 5–8–87; 11:23 am]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 52, No. 90
Monday, May 11, 1987

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate, within the Department of Agriculture, the authority to administer sections 12 through 14 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6035.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to delegate to the Assistant Secretary for Science and Education, the Assistant Secretary for Natural Resources and Environment, the Administrator, Agricultural Research Service, and the Chief, Forest Service, authority to enter into cooperative research agreements, make cash awards, and retain and use royalty income under the Stevenson-Wydler Technology Innovation Act of 1980 (Pub. L. 96–480) as amended by the Federal Technology Transfer Act of 1986 (Pub. L. 99–502). In addition, the Assistant Secretary for Science and Education is delegated authority to coordinate the above activities on behalf of the Department, and to disapprove or require the modification of any cooperative research and development agreement.

Public Law 96–480, as amended by Pub. L. 99–502, authorizes cooperative research and development agreements with private industry, other units of Government, universities, or other persons. These cooperative research and development agreements may be used where there is a mutual interest between the missions of the Federal laboratory and other levels of government or private sector organizations. Pursuant to these agreements, a Federal laboratory provides resources, but not funds if not otherwise authorized, along with a cooperating party towards the conduct of a specifically authorized research or development program or project. A Federal laboratory may: (a) Accept and retain funds, services, and property from the cooperator; (b) agree to grant in advance licenses to patents on inventions made by Federal employees; (c) waive the Government's right of ownership in inventions made by an employee of a cooperating party; and (d) permit employees or former employees to help a private sector cooperator commercialize their inventions.

Further, the Act, as amended, requires a Federal laboratory to establish a cash awards system to reward scientists and technicians for inventions, innovations, and other outstanding contributions. A direct payment of at least 15 percent of royalties received is authorized for payment to Federal employee-inventor(s) for use of Government-owned inventions.

Finally, the Act, as amended, permits Federal laboratories to retain a certain portion of royalty income rather than return it to the U.S. Department of the Treasury. The balance of royalties, after paying inventors, is retained by the agency.

While the Act, as amended, provides authority for Federal laboratories to carry out the above-stated functions, the term laboratory is defined as "a facility or *group of facilities* owned, leased, or otherwise used by the Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government." (Emphasis added.) In view of such definition of the term laboratory, the Department has determined that both the Agricultural Research Service and the Forest Service, which have many laboratories, qualify respectively as a laboratory.

Accordingly, the delegations to administer the activities in question are made to the Agricultural Research Service and the Forest Service rather than to the laboratories of which they are comprised.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**.

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

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

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

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

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

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

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

2. Section 2.19 is amended by adding a new paragraph (d)(23) to read as follows:

§ 2.19 Delegations of authority to the Assistant Secretary for Natural Resources and Environment.

* * * * *

(d) * * *

(23) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash awards program to reward scientific, engineering, and technical personnel; award royalties to

inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

* * * * *

3. Section 2.30 is amended by adding new paragraphs (a)(83) through (a)(85) to read as follows:

§ 2.30 Delegations of authority to the Assistant Secretary for Science and Education.

* * * * *

(a) * * *

(83) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a through 3710c).

(84) Coordinate USDA activities delegated under 15 U.S.C. 3710a through 3710c.

(85) Review cooperative research and development agreements entered into pursuant to 15 U.S.C. 3710a, with authority to disapprove or require the modification of any such agreement.

* * * * *

Subpart G—Delegations of authority by the Assistant Secretary for Natural Resources and Environment.

4. Section 2.60 is amended by adding a new paragraph (a) (25) to read as follows:

§ 2.60 Chief, Forest Service

(a) * * *

(25) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a through 3710c).

* * * * *

Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education.

5. Section 2.106 is amended by adding a new paragraph (a)(34) to read as follows:

§ 2.106 Administrator, Agricultural Research Service.

(a) * * *

(34) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a through 3710c).

* * * * *

For Subpart C.

Dated: May 5, 1987.

Peter C. Myers,

Secretary of Agriculture.

For Subpart G.

Dated: May 5, 1987.

George S. Dunlop,

Assistant Secretary for Natural Resources and Environment.

For Subpart N.

Dated: May 5, 1987.

Orville G. Bently,

Assistant Secretary for Science and Education.

[FR Doc. 87–10537 Filed 5–8–87; 8:45 am]

BILLING CODE 3410–03–M

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 4214S]

General Administrative Regulations-Standards for Approval; Standard Reinsurance Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby issues a new Subpart L in Chapter IV of Title 7 of the Code of Federal Regulations (CFR) to contain the Standards for Approval; Reinsurance Agreement Regulations combining the standards for financial approval (7 CFR Part 400, Subpart G) with the provisions for operational standards (7 CFR Part 400, Subpart I). The intended effect of this rule is to: (1) Modify financial standards and financial reporting requirements applicable to commercial insurance companies applying for a Standard Reinsurance Agreement with the Federal Crop Insurance Corporation, effective for the 1988 contract year (beginning July 1, 1987); (2) provide for the mandatory assumption by FCIC of all obligations for unpaid losses on policies reinsured under the Standard Reinsurance Agreement; (3) provide that no assessment for any State guaranty fund may be computed or levied against companies for, or on account of, any premiums payable on policies of Multiple Peril Crop Insurance reinsured by FCIC; and (4) provide that all regulations with respect to the Standards for Approval—Standard Reinsurance Agreement be under one subpart of the CFR. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: May 11, 1987. Removal of subparts G and I effective July 1, 1987.

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

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

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

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

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

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

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

The Standards for Approval in regard to procedures for insurance company eligibility, 7 CFR Part 400, Subpart I, were published as a final rule in the **Federal Register** on Tuesday, June 11, 1985, at 50 FR 24503.

The Standards for Approval with respect to financial standards and

financial reporting requirements for participation in an FCIC Standard Reinsurance Agreement were published as a final rule in the **Federal Register** on Friday, June 1, 1984, at 49 FR 22758. These regulations are currently contained in 7 CFR Part 400, Subpart G.

On Tuesday, July 1, 1986, FCIC published a notice of proposed rulemaking (NPRM) in the **Federal Register** at 51 FR 23782, proposing to issue a new Subpart L in Chapter IV of Title 7 of the Code of Federal Regulations (CFR) to contain the Standards for Approval; Reinsurance Agreement Regulations combining the standards for financial approval (7 CFR Part 400, Supart G), as modified by the proposed rule, with the provisions for operational standards (7 CFR Part 400, Subpart I).

The intended effect of the proposed rule was to modify financial standards and financial reporting requirements applicable to commercial insurance companies applying for a Standard Reinsurance Agreement with the Federal Crop Insurance Corporation, effective for the 1988 contract year (beginning July 1, 1987), and to provide that all regulations with respect to the standards for Approval—Standard Reinsurance Agreement be included in one subpart of the CFR.

The principal changes in the financial standards as outlined in 51 FR 23782 are:

1. Increase the minimum Investment Yield (IRIS) Ratio from 5 to 6 percent. The National Association of Insurance Commissioners (NAIC) recommended this change based on its 1984 review of insurer investments.

2. Decrease the ratio of surplus to an underwriting loss at a 400 loss ratio for insurers writing in one state. Previously, the ratio was 10 to 1 for one-state companies; the maximum is now 8 to 1.

3. Permit substitution of certain other financial information when the commercial company is not required to file an annual statement with a State Insurance Commission. Some insurance companies are exempt by their State Insurance Departments from filing annual statements. The annual statements provide basic information used by FCIC in the review and approval of potential and current reinsureds.

The Insurance Regulatory Information System (IRIS) Ratios in this rule were development by the NAIC. Their primary use is to assist State Insurance Departments to oversee the financial condition of insurers. FCIC uses them to evaluate the financial strength of applicants for reinsurance.

The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from National Ag' Underwriters, Inc. (NAUI), listing five suggested amendments to the rule.

Listed below are the NAUI comments and the sections of the rule affected:

1. *Section 400.141(f)* The comment states that smaller insurers do not use an independent public accountant and that to require them to do so would involve unnecessary expense. FCIC is of the opinion that the majority of Companies *do* use such accountants and finds no justification for amending this section.

2. *Section 400.149* NAUI takes issue with the determination that the Manager's decision is final in matters arising under this Subpart and the Reinsurance Agreement between the Company and takes the position that FCC is denying a Company redress in the courts. FCIC, by this determination, does not abrogate the rights of any Company to seek redress in litigation, it merely exercises it rights under the Agreement and will not change this section.

3. *Section 400.150(c)* The proposed rule requires that a Company must have 5 percent of its policies in a state to issue policies in that state. NAUI considers this figure to be too high because of the aberrant statistical nature of this standard and that a limit of 2 and one-half percent (2½%) is more appropriate. FCIC agrees with this and has changed the final rule accordingly.

4. *Section 400.150(c)* FCIC agrees with the NAUI comment that this section is at odds with § 400.141(h) which uses a "maximum possible" concept while actually defining a "maximum probable" concept and makes the change in § 400.141(h) accordingly. NAUI also comments that this section ignores outside reinsurance which is included in § 400.141(h). FCIC makes the recommended changes and makes further changes in § 400.141(h) and other sections of the rule to define "MPUL" as meaning "maximum probable underwriting loss."

This section is further amended to change the term "values" to "factors" as specified in the Minimum Surplus Table and to change 5 percent to 2½ percent as indicated in item 3 above.

5. *Section 400.152* FCIC agrees with NAUI's comment that any one of the sub-items (a) through 3(c) is sufficient to qualify a Company that failed to qualify because it had less than 8 IRIS results in the normal range at the last year-end examinations, therefore, all items are of equal weight and importance. FCIC accepts the recommendation made to redesignate § 400.152(c) (1), (2), and (3) as § 400.152 (c), (d), and (e), as contained herein.

On Thursday, February 26, 1987, FCIC published a notice of additional proposed rulemaking and extension of comment period in the **Federal Register** at 52 FR 5773, to: (1) Provide for the assumption by FCIC of all obligations for unpaid losses on policies reinsured under the Standard Reinsurance Agreement in the event that a company reinsured under such Agreement is unable to fulfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by FCIC by reason of a directive or order issued by a State Department of Insurance or by a court of competent jurisdiction; and (2) provide that no policy of insurance reinsured by FCIC, nor any claim, settlement, or adjustment action under such policy will provide a basis for a claim for damages, that the Corporation would not be liable for, against reinsured companies or their agents or employees, unless the claimant establishes that the basis of its claim for such damages was the result of the reinsured Company's or its agents' or employees' actions which were beyond the scope of their authority or was the result of their failure to substantially comply with FCIC's procedures in the handling of the claim or in servicing the insured's policy.

Background

Most State laws regulating insurance provide for a guaranty fund assessment whereby the State obtains funds from regulated insurance companies licensed to operate within that State. The funds are used by the state to discharge any unfunded obligations of any such regulated insurance company.

Standard Reinsurance Agreement between FCIC and a reinsured Company provides that, whenever a Company reinsured by FCIC is unable to fulfill its obligations to any policyholder reinsured under the Agreement, by virtue of an order or directive issued by a State Department of Insurance, or a court of competent jurisdiction, all such policies affected by such order or directive are immediately transferred to FCIC along with the obligations for all unpaid losses whether they occurred before or after such transfer. In addition, FCIC collects all funds with respect to all policies transferred and assumes from the Company the right to all uncollected premiums.

Since FCIC guarantees fulfillment of the Reinsured Company's obligations to insureds, the guarantee fund will not be required to pay on such policies. Any requirement by a State Department of

Insurance for guaranty fund assessment against insurance companies licensed to operate in a state who participate in the Standard Reinsurance Agreement with FCIC on policies reinsured by FCIC is unnecessary because, in reality, such obligations to insureds are and have been guaranteed by FCIC as a part of its reinsurance agreement.

Under the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (the Act), State and local laws or rules are not applicable to contracts or agreements of FCIC, or the parties thereto, to the extent that such contracts or agreements provide that such State or local laws or rules shall not apply, or that such laws or rules are inconsistent with such contracts or agreements (7 U.S.C. 1506(k)).

The Act further precludes recovery of assessments for the purpose of discharging unfunded obligations through additions to premium rates as provided by some of the state laws with respect to licensed insurance companies.

Rates charged by FCIC and the Reinsured Companies for insurance under the requirements of the Act must cover only anticipated indemnities and establish a reasonable reserve against unforeseen losses (7 U.S.C. 1508(b)(1)).

FCIC has determined that State laws or rules providing for guaranty fund assessment for the purpose of discharging unfunded obligations of insurance companies should be preempted because the Standard Reinsurance Agreement provides adequate assurance that, with respect to Multiple Peril Crop Insurance reinsured by FCIC, any such State requirements will be properly met.

It is therefore determined that no such unfunded obligations, as are provided for and required by some State laws of insurance practice, will arise under any FCIC reinsured multiple peril crop insurance business conducted in any State and that such business should not be subject to any guaranty fund assessment.

For this purpose, FCIC exercises the preemptive authority contained in 7 U.S.C. 1506(k) by: (1) Providing for the mandatory assumption by FCIC of all obligations for unpaid losses on policies reinsured under the Standard Reinsurance Agreement; and, (2) asserting that no assessment for any State guaranty fund may be computed or levied against companies for, or on account of, any premiums payable on policies of Multiple Peril Crop Insurance reinsured by FCIC.

In addition, FCIC more clearly defines the obligations of the Corporation, with respect to damages, by providing that no policy of insurance reinsured by FCIC will be the basis of a claim for damages which the FCIC would not be liable for unless the claimant establishes that the claim is based on the failure of the reinsured Company or its agents to properly follow FCIC procedures and instructions in the handling of the claim or servicing the insured's policy, or unless the Reinsured Company or its agents were acting outside the scope of their authority.

The losses paid by a reinsured Company, including the sum paid by the Company under any crop insurance contract reinsured by FCIC in settlement of any claim and in satisfaction of any judgment rendered on account of such claim, are computed in the ultimate net loss of the Company. Such ultimate net loss computation may also include interest and insured's court costs contained in a final judgment against the Company in a court of competent jurisdiction.

In order to assure that the portion of the liability for ultimate net losses which the Company cedes to FCIC as reinsurance is correct and justified, FCIC has determined that no policy of insurance reinsured by FCIC will be the basis for a claim for damages unless the claimant establishes in court, or in the case of a settlement, satisfies FCIC, that the reinsured Company failed to comply with FCIC procedures with respect to the claim, or in servicing the insured, or that the Company or its agents were acting beyond the scope of their authority.

Further, for the purpose of notice to the insureds, all Multi Peril crop insurance policies reinsured by the Corporation must be clearly identified as such.

In order for the reader to refer to provisions contained in 7 CFR Part 400, Subparts G and I, FCIC herewith provides a re-designation table to indicate the relocation of such previous provisions in 7 CFR Part 400, Subpart L:

Old	New
7 CFR Part 400, Subpart G:	
400.50 Applicability of Standards for Approval.	400.143.
400.51 Definitions	400.141 and 142.
400.52 Certification of submissions.	400.150.
400.53 Notification of deviation from Financial Standards.	400.154.
400.54 Revocation and non-acceptance.	400.155.
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400.56 Qualifications for less than acceptable; waiver.	400.152 and 153.
7CFR Part 400, Subpart I:	
400.75 Availability of reinsurance agreements.	400.144.
400.76 Eligibility for reinsurance agreements.	400.145.
400.77 Obligations of the Corporation.	400.146.
400.78 Limitations on Corporation's obligations.	400.147.
400.79 Obligations of participating insurance companies.	400.148.
400.80 Disputes	400.149.
400.81 OMB control numbers.	400.157.

The public was given an additional 30 days in which to submit written comments, data, and opinions on both the original proposed rule published in the **Federal Register** at 51 FR 23782, and the additional proposed rulemaking and extension of comment published in the **Federal Register** at 52 FR 5773. No further comments were received on the original proposed rule, and no comments were received on the notice of additional proposed rulemaking.

Accordingly, the proposed rule at 51 FR 23782, as amended by the additional rulemaking proposed at 52 FR 5773, is hereby adopted as final.

The Standard Reinsurance Agreement for the 1988 contract year will be issued to commercial insurance companies on July 1, 1987. In order for these commercial insurance company contractors to have sufficient time to study and be in compliance with these financial and operational requirements before entering into an agreement with FCIC, it is necessary that these Standards for Approval be made effective as soon as possible. Therefore, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 400

Crop insurance, Reinsurance agreement, Standards for approval.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation (FCIC) hereby removes and reserves Subparts G and I and adds a new Subpart L to be known as 7 CFR Part 400, Subpart L, General Administrative Regulations—Reinsurance Agreement-Standards for Approval, effective for the 1988 and subsequent contract years (beginning July 1, 1987), as follows:

§§ 400.50—400.56 (Subpart G) [Removed and reserved]

1. Subpart G consisting of §§ 400.50 through 400.56 is removed and reserved.

§§ 400.75—400.81 (Subpart I) [Removed and reserved]

2. Subpart I consisting of §§ 400.75 through 400.81 is removed and reserved.

3. Subpart L consisting of § 400.141 through 400.157 is added to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

* * * * *

Subpart L—Reinsurance Agreement—Standards for Approval—Regulations for the 1988 and Subsequent Contract Years

Sec.

Subpart L—Reinsurance Agreement—Standards for Approval—Regulations for the 1988 and Subsequent Contract years

Authority: Secs 501–520, Pub. L. 75–430, 52 Stat. 72–77 (7 U.S.C. 1501–1520), as amended.

§ 400.141 Definitions.

In addition to the terms defined in the Standard Reinsurance Agreement, the following terms as used in this rule are defined to mean:

(a) "Company" means the company reinsured by FCIC or apply to FCIC for a Standard Reinsurance Agreement.

(b) "Corporation" means the Federal Crop Insurance Corporation.

(c) "Current Assets" mean assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business, or within one year, if the operating cycle is less than one year.

(d) "Current Liabilities" mean liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time.

(e) "FCIC" means the Federal crop Insurance Corporation.

(f) "Financial statement" means the audited financial statement of an insurer seeking FCIC reinsurance prepared annually by an independent public accountant in accordance with generally accepted accounting principles; together with related exhibits, schedules, and explanations. This is the financial statement of an insurer submitted to the State Insurance Department if required by any state in which the insurer does business.

(g) "Guaranty fund assessments" means the state administered program utilized by some state insurance regulatory agencies to obtain funds with which to discharge unfunded obligations of insurance companies licensed to do business in that state.

(h) "Insurer" means an insurance company that is licensed or admitted as such in any State, Territory, or Possession of the United States.

(i) "MPUL" means the maximum probable underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any outside reinsurance agreements, as evaluated by FCIC.

(j) "Nonaffiliated company" means an insurer (1) that is not owned or controlled by the reinsured, (2) which does not own or control the reinsured, or (3) which is not jointly owned or controlled with the reinsured by any person or entity.

(k) "Obligations" mean crop or indemnity for crop loss on policies reinsured under the Standard Reinsurance Agreement.

(l) "Plan of Operation" means a statment submitted to FCIC each year in which a reinsured or a prospective reinsured specifies the reinsurance options it wishes to use, its marketing plan, and similar information as required by the Corporation.

(m) "Reinsurance agreement" means an agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

(n) "Reinsured" means the insurer which is a party to the Standard Reinsurance Agreement with FCIC.

(o) "Standard Reinsurance Agreement" (Agreement) means the reinsurance agreement between the reinsured and FCIC.

§ 400.142 Definitions, IRIS Ratios.

As used in this rule, with respect to the IRIS Ratios, the following terms are defined to mean:

(a) "Agents' Balances to Surplus Ration" means premiums and agents' balances in the course of collection, divided by surplus.

(b) "Change in Surplus Ratio" means the increase or decrease in surplus, divided by the prior year-end surplus, with surplus adjusted for deferred acquisition expenses.

(c) "Change in Writings Ratio" means the increase or decrease in net premiums written, divided by the prior year's net premiums written.

(d) "Estimated Current Reserve Deficiency to Surplus Ratio" means the estimated current deficiency or redundancy in the liabilities for losses and loss adjustment expenses, divided by surplus. The estimated deficiency or redundancy is the net earned premium, times the average of the developed loss ratios from the one-year and the two-year reserve development to surplus ratios, minus the liabilities for losses and loss adjustment expenses reflected in the Company's annual or financial statement.

(e) "Investment Yield Ratio" means the net investment income divided by the average invested assets. Invested assets are: investments, cash, and investment income due and accrued, less borrowed money.

(f) "IRIS Ratios" mean the eleven financial ratios contained in the National Association of Insurance Commissioner's Insurance Regulatory Information System (IRIS). They are calculated using data from an insurer's annual statement for the accounting period ending the previous December 31st, and are expressed as percentages.

(g) "Liabilities to Liquid Assets Ratio" means liabilities divided by liquid assets. Liquid assets are cash, investments, investment income due and accrued, and agents' balances or uncollected premiums deffered and not yet due, less investments in affiliates and real estate in excess of 5% of liabilities.

(h) "One-Year Reserve Development to Surplus Ratio" means the one-year development of losses and loss adjustment expenses, divided by the prior year-end surplus. The one-year reserve development is the net payments during the current year for losses incurred more than one year prior, plus current liabilities for such losses, minus the liabilities on such losses at the prior year end.

(i) "Premium to Surplus Ratio" means net premiums written, divided by surplus.

(j) "Surplus Aid to Surplus Ratio" means surplus aid from reinsurance, divided by surplus. Surplus aid is estimated by multiplying the ratio of ceded commissions to ceded premiums by the unearned premiums on reinsurance ceded to nonaffiliated companies.

(k) "Two-Year Overall Operating Ratio" means the sum of the following two ratios: losses and loss expenses incurred, dividends to policyholders, and net investment income, all divided by net premiums earned; and other underwriting expenses, less income, divided by net premiums written.

(l) "Two-Year Reserve Development to Surplus Ratio" means a ratio calculated the same as the one-year reserve development to surplus ratio, except that a two-year base period is used.

(m) "Usual Range" means the range of IRIS Ratio results that has been established by the National Association of Insurance Commissioners as usually indicative of financially sound insurers.

§ 400.143 Applicability.

The standards contained herein shall be applicable to insurers who apply for or enter into a Standard Reinsurance Agreement effective for the 1988 and subsequent contract years.

§ 400.144 Availability of the Standard Reinsurance Agreement.

Federal Crop Insurance Corporation will offer Standard Reinsurance Agreements to eligible Companies under which the Corporation will reinsure policies which the Companies issue to producers of agricultural commodities. The Standard Reinsurance Agreement will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and provisions of the regulations of the Corporation found at Chapter IV of Title 7 of the Code of Federal Regulations.

§ 400.145 Eligibility for Standard Reinsurance Agreements.

A Company will be eligible to participate in an Agreement if the Corporation determines the Company meets the standards and reporting requirements of this subpart.

§ 400.146 Obligations of the Corporation.

The Agreement will include the following among the obligations of the Corporation.

(a) The Corporation will reinsure policies written on terms, including premium rates, approved by the Corporation, on crops and in areas approved by the Corporation, and in accordance with the provisions of the Federal Crop Insurance Act, as amended, and the provisions of these regulations.

(b) The Corporation will pay a portion of each producer's premium on the policies reinsured under the Agreement, as authorized by the Federal Crop Insurance Act, as amended.

(c) The Corporation will assume alll obligations for unpaid losses on policies reinsured under the Agreement in the event any company reinsured under the Agreement is unable to fulfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by the Corporation by reason of a directive or order issued by any State Department of Insurance, State Commissioner of Insurance, any court of law having competent jurisdiction or any other similar authority of any jurisdiction to which the Company is subject.

(d) Each policy reinsured by the Corporation must be clearly identified by including in bold face or large type the following statement as item number 1 in its General Provisions:

This insurance policy is reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended (the Act) (7 U.S.C. 1501 *et seq.*), and all terms of the policy and rights and responsibilities of the parties are specifically subject to the Act and the regulations under the Act published in Chapter IV of 7 CFR.

§ 400.147 Limitations on Corporation's obligations.

The Agreement will include the following among the limitations on the obligations of the Corporation.

(a) The Corporation may, at any time, suspend its obligation to accept additional liability from the Company by providing written notice to that effect.

(b) The obligations of the Corporation under the Agreement are contingent upon the availability of appropriations.

(c) The Corporation will not reinsure any policy sold by the Company to a producer after the date Company receives notice that the Corporation has determined that the producer is ineligible to receive Federal Crop Insurance.

§ 400.148 Obligations of participating insurance company.

The Agreement will include the following among the obligations of the Company.

(a) The Company shall follow all applicable Corporation procedures in its administration of the crop insurance policies reinsured.

(b) The Company shall make available to all eligible producers crop insurance for the crops and in the areas which are stated in its plan of operation as approved by the Corporation.

(c) The Company shall provide the Corporation, on forms approved by the Corporation, all information that the Corporation may deem relevant in the administration of the Agreement, including a list of all applicants refused coverage and all insured producers cancelled from insurance, along with the reason for such action, the crop program and the amount of coverage for each.

(d) The Company shall utilize only loss adjustment procedures and methods that are approved by the Corporation.

(e) The Company shall sell the policies covered under the Agreement through licensed agents or brokers who have successfully completed a training course approved by the Corporation.

(f) The Company shall not discriminate against any employee, applicant for employment, insured or applicant for insurance because of race, color, religion, sex age, handicap, or national origin.

§ 400.149 Disputes.

All disputes arising under this subpart and the Standard Reinsurance Agreement entered into by the Company and the Corporation must be submitted for decision to the Manager of the Corporation. The decision of the Manager shall be final unless the Company requests reconsideration in writing within 45 days of the receipt of the decision. Any hearing provided by the Corporation will be of an informal nature and the rules of evidence will not apply. Pending final decision of the dispute, the Company will proceed diligently with the performance of the Agreement, as required by the Corporation.

§ 400.150 General qualifications.

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer must:

(a) Be a licensed or admitted insurer in any State, Territory, or Possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing Company an insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent financial statement, that is at least equal to the MPUL for the gross premium proposed to be reinsured times the appropriate Minimum Surplus Factor, found in the Minimum Surplus

Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least 2 and one-half percent (2½%) of all its reinsured gross premium is written in that state;

MINIMUM SURPLUS TABLE

Number of States in which a company issues FCIC-reinsured policies:	Minimum surplus factor (multiply by underwriting loss at a 400 loss ratio:)
1	8
2 through 10	5
11 or more	4

(d) Have at least eight of its eleven IRIS ratios, based on its most recent financial statement, fall within the usual ranges stipulated in the Usual Ranges of IRIS Ratios Table:

USUAL RANGES OF IRIS RATIOS TABLE

IRIS ratio	Usual range (percent)	
	From	To
Premium to Surplus		+300
Change in Writings	−33	+33
Surplus Aid to Surplus		+25
Two-Year Overall Operating Ratio		+100
Investment Yield		+6 and up
Change in Surplus	−10	+50
Liabilities to Liquid Assets		+105
Agent's Balances to Surplus		+40
One-Year Reserve Development to Surplus		+25
Two-Year Reserve Development to Surplus		+25
Estimated Current Reserve Deficiency to Surplus		+25

(e) Submit to FCIC with its Plan of Operation each year a copy of the latest financial statement, certified to by the President and another officer of the insurer, and filed with the Insurance Department of any state in which the Company does business; and

(f) Submit to FCIC any insurance department examination report, loss reserve certification, independent auditor's letter relating to the adequacy of the Company's internal control, and any other appropriate financial information, as requested by FCIC.

§ 400.151 Qualifying when a State does not require that a financial statement be filed.

An insurer which is exempt by the Insurance Department of the state from submitting a financial statement to the state must, in addition to the requirements of § 400.150 (a), (b), (d), and (f):

(a) Submit to FCIC with its Plan of Operation each year a copy of the latest financial statement certified to by the President and another officer of the insurer, which, if not exempted, would have been filed with the Insurance Department of any state in which it does business;

(b) Have a ratio of current assets to current liabilities of at least 1.2 to 1; and

(c) Have surplus at least equal to the factor specified in the Minimum Surplus Table, times its MPUL from the policies to be reinsured by FCIC.

§ 400.152 Qualifying with less than eight IRIS ratios in the usual range.

An insurer with less than eight of the IRIS ratios in the usual range (required by § 400.150(d)) may qualify if, in addition to the requirements of § 400.150 (a), (b), (c), (e), and (f), the insurer:

(a) Submits a plan, acceptable to FCIC, to eliminate the financial deficiency indicated by the IRIS ratios;

(b) Has a B+ rating or higher in the latest edition of "Best's Insurance Reports," is listed in the latest edition of "Surety Companies Acceptable on Federal Bonds," or is currently approved under the provisions of Treasury Department Circular No. 570; and

(c) Has a ratio of current assets to current liabilities of at least 1.2 to 1, and a surplus at least equal to the factors specified in the Minimum Surplus Table times its MPUL from the policies to be reinsured by FCIC;

(d) Has an irrevocable source of surplus such that conditions in paragraph (c) of this section are met; or

(e) Has a binding agreement with another insurer that qualifies such insurer under this Part 400 to assume financial responsibility in the event of the reinsured's failure to meet its obligations on FCIC reinsured policies.

§ 400.153 Qualifying by waiver.

If an insurer does not qualify under any of the above methods because of unique circumstances and FCIC determines that the insurer is otherwise financially sound, FCIC may enter into a reinsurance agreement with the insurer.

§ 400.154 Notification of deviation from financial standards.

An insurer must immediately advise FCIC if it deviates from compliance with any of the requirements of this chapter. FCIC may require the insurer to update its financial statement during the year. FCIC may terminate the reinsurance agreement if the Company is out of compliance with the requirements of this chapter.

§ 400.155 Revocation and non-acceptance.

(a) FCIC will deny reinsurance to any insurer or will terminate any existing reinsurance agreement if any false or misleading statement is made in the financial statement or any other document submitted by the insurer in connection with its qualification for FCIC reinsurance.

(b) No policy issued by an insurer subsequent to revocation of a reinsurance agreement will be reinsured by FCIC. Policies in effect at the time of revocation will continue to be reinsured by FCIC for the balance of the crop year then in effect for the applicable crop. However, if materially false information is made to the Corporation and that information directly affects the ability of the Company to perform under the Agreement, or if the Company commits any fraudulent or criminal act in relation to the Standard Reinsurance Agreement or any policy reinsured under the Agreement, FCIC may require that the Company transfer the servicing and contractual right to all business in effect and reinsured by the Corporation to the Corporation.

§ 400.156 State action preemptions.

(a) No policyholder shall have recourse to any state guaranty fund or similar state administered program for crop or premium losses reinsured under such Standard Reinsurance Agreement. No assessments for such State funds or programs shall be computed or levied on companies for or on account of any premiums payable on policies of Multiple Peril Crop Insurance reinsured by the Corporation.

(b) No policy of insurance reinsured by the Corporation and no claim, settlement, or adjustment action with respect to any such policy shall provide a basis for a claim of damages against the Company issuing such policy, other than damages to which the Corporation would be liable under federal law if the Corporation had issued the policy of insurance under its direct writing program, unless the claimant establishes in a court of competent jurisdiction, or to the satisfaction of the Corporation in the event of a settlement, that such damages were caused by the culpable failure of the Company to substantially comply with the Corporation's procedures or instructions in the handling of the claim or in servicing the insured' policy, or unless the Company or its agents were acting outside the scope of their authority (apparent or implied) in performing or omitting the actions claimed as a basis for the damage action.

§ 400.157 OMB control numbers.

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

Done in Washington, DC, on April 16, 1987.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-10485 Filed 5-8-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449

[Docket No. 4206S]

General Amendment; Various Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Crain Sorghum, Rice, Peanut, Sunflower, Sugar Beet, Soybean, Corn, Dry Bean, Fresh Market Tomato, Pepper, Popcorn, and Fresh Market Sweet Corn Corp Insurance Regulations (7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449, respectively), effective for the 1988 and succeeding crop years. The intended effect of this rule is to: (1) Provide that premium may be deducted from a replant payment; (2) provide that the original liability is reinstated on the replanted crop when such crop is replanted in accordance with the requirements of the original planting; and (3) provide that, in cases where seasonal conditions dictate a method different from the requirements of the original planting, the liability will be reduced by the amount of the replant payment. The authority for the promulgation of this rule is contained in the Federal Corp Insurance Act, as amended.

EFFECTIVE DATE: April 30, 1987.

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

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

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

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

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

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 25, 1983.

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

Background

Beginning with the 1981 crop year, replant payment provisions were initiated by the Corporation on several crops to be limited to the actual cost of replanting. The replant payment was considered by the Corporation to be an indemnity payment and the amount of premium owed was deducted from the replant payment in the same manner as it was deducted from an indemnity payment.

Some persons questioned the appropriateness of applying the replant payment against premium owed. They contended that deducting the replant payment from any subsequent indemnity is unfair in that there were extra expenses incurred for replanting, and that such actions did, in most cases, result in lower losses for FCIC. It was generally agreed that a replant payment should not increase the total liability under the contract.

Effective with the 1985 crop year, the Corporation amended the replant payment provisions to provide that premiums owed may be deducted from the replant payment only if the billing date had passed, and that replant payments continue to be regarded as part of the total liability of the contract but not be deducted from subsequent indemnities until the sum equals the total liability.

It was determined that the deduction of premium owed only after the billing date had passed hampered the Corporation's obligation to collect premium in a timely and businesslike manner.

The present provisions in the subject policies provide that premium owed may be deducted from a replant payment and reads as follows:

> Any unpaid amount due us may be deducted from any indemnity payable to you or from a replant payment if the billing date has passed on the date you are paid the replant payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

The insurance contracts provide that the premium is due and payable when insurance attaches, usually at the time of planting. The Corporation has determined, as a matter of policy, that payment will not be demanded until approximately the time of harvest or the time of loss whichever is earlier.

Therefore, the Corporation delays billing until approximately harvest time so that the insured may pay the premium from the proceeds of the crop or from any indemnity which may be due.

If there is a substantial loss during the period before the final planting date, it is to the benefit of both the insured and the Corporation that the crop be replanted. The contracts require that replanting be done if time permits. For this purpose the Corporation pays a set amount not to exceed the actual cost of replanting. However, since the premium is due and owing to the Corporation before the time of replanting, good business practices require that the replanting payment be set off against the outstanding debt owed to the Corporation. The replanting payment is in the nature of an indemnity.

Since the premium is due and owing at the time insurance attaches, the insured's replanting payment is used to reduce the amount of premium outstanding, thereby reducing the amount the insured must pay to the Corporation at the time of harvest. Application of the payment to premium due will increase the collection of accounts due to the Corporation in accordance with sound business practices and will reduce the confusion caused by making payments to insureds and shortly thereafter billing them for premium due on the same contract.

In exchange for replanting, the Corporation pays a replanting payment. The full guarantee will be applicable to the replanted crop and the basis upon which any subsequent loss will be paid,

as provided in the contract. No deduction will be made in the amount of loss for the replant payment. As a further consideration in exchange for replanting, the insured's premium determined for the full crop guarantee is not increased when a replant payment is made.

By this means, the Corporation provides incentive to the policyholder to do all possible to replant to the insured crop by defraying most of the cost involved in replanting and by absorbing any premiums increased normally associated with assumption of increased liability. Taken together, the replant payment and absorption of premium increase are considered jointly beneficial to the insured producer and cost effective to the Corporation in lieu of full indemnity payment under the terms of insurance.

On Friday, January 30, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 3013 to amend the Grain Sorghum, Rice, Peanut, Sunflower, Sugar Beet, Soybean, Corn, Dry Bean, Fresh Market Tomato, Pepper, Popcorn, and Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449, respectively), effective for the 1988 and succeeding crop years, to allow the Corporation to: (1) Deduct premium from a replant payment without regard to billing dates; and (2) reinstate full liability on the replanted crop.

The public was given 60 days in which to submit written comments, data, and opinions, on the proposed rule. One comment was received from the Crop Hail Actuarial Association (CHIAA). CHIAA recommended that FCIC review the requirement that the crop must be planted in accordance with the requirements of the initial planting.

The provision referred to by CHIAA was contained in both the preamble to the proposed rule published at 52 FR 3013, and in the amendatory language. The preamble stated: "The full guarantee will be reinstated only if the crop is replanted in accordance with the requirements for planting the initial crop. For example, if the initial crop was required to be planted in rows far enough apart to be cultivated, replanting by broadcast will not result in reinstatement of the full guarantee. In that example, replanting would result in the guarantee being reduced by the amount of the replanting payment."

The amendatory language in the proposed amendment to section 9 of the policies stated: "To be eligible for transfer of liability without reduction, the crop must be planted in accordance with the requirements of the initial planting."

Citing sunflowers as an example of several crops which must be initially planted in rows far enough apart to permit cultivating, CHIAA indicated the sunflower crop could feasibly be, and in many counties is, replanted by broadcast method in keeping with local farming practices.

In reviewing the scope of the rule, FCIC agrees in principle with the comment by CHIAA and has determined that, requiring the crop to be replanted in accordance with the requirements of the initial planting in order to be eligible for transfer of full liability, in all counties and without exception, imposes an unnecessary restriction on the policyholder in counties where seasonal conditions dictate replanting by broadcast method if replanting is to be accomplished timely.

However, in those circumstances where a producer may elect to replant by a broadcast method in order to complete planting timely, a full crop may not be produced. This would have the effect of reinstating full liability on a crop that would not reach 100% productivity because of difficulty in conducting a good cultivation program.

If full reinstatement of liability were to be made on such a crop, the net result would be that the Corporation would be overinsuring.

In order to provide sound actuarial insurance coverage on a crop replanted by a broadcast method when the original planting pattern was by a different method, it would be necessary to reduce the liability by the amount of the replant payment because of the inherent risk involved.

For this reason, FCIC amends the rule to provide that, if because of seasonal conditions it is an accepted practice in an area that a crop may be replanted by a broadcast method, and the insured replants by such method in order for the crop to be planted timely, the Corporation will transfer to the replanted crop the original amount of liability reduced by the amount of the replant payment.

However, in areas where the seasonal conditions do not prescribe broadcast as a means of replanting an insured crop, FCIC will require that the crop be replanted in accordance with the requirements of the initial planting in order to be eligible for a replanting payment. In such cases, the Corporation will transfer the original liability to the replanted crop with no reduction of liability by the amount of the replant payment and no increase in the original premium charged for insurance coverage.

FCIC has further determined that, since the modification of the eligibility requirement for transfer of liability with respect to replanting is in the nature of removing a restriction on those policyholders who replant by broadcast method in accordance with seasonal conditions, further notice and public comment is unnecessary.

Therefore, with the exception of the amendment outlined above, the proposed rule, as published at 52 FR 3013, is hereby adopted as a final rule.

In order to provide all producers sufficient notice of the replant payment provisions contained herein, it is found necessary that these provisions be made available as soon as possible. For this reason, good cause is shown for making this rule effective April 30, 1987.

List of Subjects in 7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449

Crop insurance, Grain sorghum, Rice, Peanut, Sunflower, Sugar beet, Soybean, Corn, Dry bean, Fresh market tomato, Pepper, Popcorn, Fresh market sweet corn.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Grain sorghum, Rice, Peanut, Sunflower, Sugar beet, Soybean, Corn, Dry bean, Fresh market tomato, Pepper, Popcorn, and Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449, respectively), effective for the 1988 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449 continues to read as follows:

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

2. In §§ 420.7(d), 424.7(d), 425.7(d), 428.7(d), 430.7(d), 431.7(d) 432.7(d), 433.7(d), 444.7(d), 445.7(d), 447.7(d), and 449.7(d), section 6 of the FCIC Policy is revised in its entirety to read as follows:

§§ 420.7, 424.7, 425.7, 428.7, 430.7, 431.7 432.7, 433.7, 444.7, 445.7, 447.7, and 449.7 The application and policy.

* * * * *

(d) * * *

6. Deduction for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from any replant payment, or from any loan or payment due you under any Act of Congress or program administered by the

United States Department of Agriculture or its Agencies.

* * * * *

3. In §§ 420.7(d), 424.7(d), 428.7(d), 430.7(d), 444.7(d), 445.7(d), and 449.7(d), section 9 of the FCIC Policy is amended by adding subsections 9.f.(3) and (4) to read as follows:

§§ 420.7, 424.7, 428.7, 430.7, 444.7, 445.7, and 449.7 The application and policy.

* * * * *

(d) * * *

9. Claim for indemnity.

* * * * *

f. * * *

(3) The Corporation will transfer the original liability to the replanted crop without reduction by the amount of the replant payment and without increase in the original premium charged for insurance coverage when the crop is replanted in accordance with the requirements of the original planting.

(4) If seasonal conditions dictate replanting by broadcast method, and such method differs from the requirements of the original planting, the Corporation will transfer the original liability to the replanted crop reduced by the amount of the replant payment and without increase in the original premuim charged for insurance coverage.

* * * * *

4. In § 447.7(d), section 9 of the FCIC Policy is amended by adding subsections 9.f.(4) and (5) to read as follows:

§ 447.7 The application and policy.

* * * * *

(d) * * *

9. Claim for indemnity.

* * * * *

f. * * *

(4) The Corporation will transfer the original liability to the replanted crop without reduction by the amount of the replant payment and without increase in the original premium charged for insurance coverage when the crop is replanted in accordance with the requirements of the original planting.

(5) If seasonal conditions dictate replanting by broadcast method, and such method differs from the requirements of the original planting, the Corporation will transfer the original liability to the replanted crop reduced by the amount of the replant payment and without increase in the original premuim charged for insurance coverage.

* * * * *

5. In §§ 425.7(d), 432.7(d), and 433.7(d), section 9 of the FCIC Policy is amended by adding subsections 9.g.(3) and (4) to read as follows:

§§ 425.7, 432.7, and 433.7 The application and policy.

* * * * *

(d) * * *

9. Claim for indemnity.

* * * * *

g. * * *

(3) The Corporation will transfer the original liability to the replanted crop without reduction by the amount of the replant payment and without increase in the original premium charged for insurance coverage when the crop is replanted in accordance with the requirements of the original planting.

(4) If seasonal conditions dictate replanting by broadcast method, and such method differs from the requirements of the original planting, the Corporation will transfer the original liability to the replanted crop reduced by the amount of the replant payment and without increase in the original premium charged for insurance coverage.

* * * * *

6. In § 447.7(d), section 17 of the FCIC Policy is amended by redesignating present subsections j. through l. as k. through m. respectively, and by adding a new subsection 17.j. to read as follows:

§ 447.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

j. "Replant payment" that means payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

7. In § 432.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections k. through n. as l. through o. respectively, and by adding a new subsection 17.k. to read as follows:

§ 432.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

k. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.g. of this policy which payment is subject to offset for premium owed.

* * * * *

8. In §§ 420.7(d), 428.7(d), and 431.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections k. through m. as l. through n. respectively, and by adding a new subsection 17.k. to read as follows:

§§ 420.7, 428.7, and 431.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

k. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

9. In § 424.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections k. through o. as l. through p. respectively, and by adding a new subsection 17.k. to read as follows:

§ 424.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

k. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

10. In § 430.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections l. through n. as m. through o. respectively, and by adding a new subsection 17.l to read as follows:

§ 430.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

l. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

11. In § 433.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections l. through n. as m. through o. respectively, and by adding a new subsection 17.l to read as follows:

§ 433.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

l. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.g. of this policy which payment is subject to offset for premium owed.

* * * * *

12. In § 425.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections l. through o. as m. through p. respectively, and by adding a new subsection 17.l. to read as follows:

§ 425.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

l. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.g. of this policy which payment is subject to offset for premium owed.

* * * * *

13. In § 449.7(d), section 17 of the FCIC Policy is amended by redesignating the

present subsections p. through u. as q. through v. respectively, and by adding a new subsection 17.p. to read as follows:

§ 449.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

p. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

14. In § 444.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections s. through w. as t. through x. respectively, and by adding a new subsection 17.s. to read as follows:

§ 444.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

s. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

15. In § 445.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections t. through w. as u. through x. respectively, and by adding a new subsection 17.t. to read as follows:

§ 445.7 The application and policy.

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

t. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

Done in Washington, DC, on April 20, 1987.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-10484 Filed 5-8-87; 8:45 am]

BILLING CODE 3410-08-M

Commodity Credit Corporation

7 CFR Part 1493

[Amdt. 3]

Export Credit Guarantee Program (GSM-102) and Intermediate Export Credit Guarantee Program (GSM-103); Coverage of Freight Costs and Marine War Risk Insurance

AGENCY: Commodity Credit Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103) regulations to permit freight costs and marine and war risk insurance to be covered by the payment guarantees issued under these programs for all U.S. agricultural commodities. Prior to this rule change, freight costs could only be covered by payment guarantees on export sales of breeding animals. This rule will help promote the export of other U.S. agricultural commodities since a U.S. exporter would be able to offer credit to the foreign buyer for the costs of freight and marine and war risk insurance as well as the commodity cost, if the commodity is sold to the foreign buyer on c&f or c.i.f. basis.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250, Telephone: (202) 447-6225.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

This action has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulations 1512-1 and has been classified as "not major" since the rule would not have any of the effects specified in those documents.

To the extent that the provisions of the Regulatory Flexibility Act apply, if any, the General Sales Manager, Foreign Agricultural Service (FAS), certifies that this rule will not have a significant economic impact on a substantial number of small entities since there will not be a substantial number of such entities affected by this rule. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

An assessment of the impact of the rule on the environment was made, and based on this evaluation, it has been determined that this action is not a major federal action and will have no foreseeable significant effect on the quality of the human environment. Consequently, no environmental impact statement is necessary for this rule. The environmental assessment is available for review in Room 4503, South Building, USDA, during normal business hours.

Proposed Rule

On March 19, 1987, CCC published in the **Federal Register** (52 FR 8605) a notice of proposed rule making, setting forth a proposal to amend the CCC Export Credit Guarantee Program (GSM-102) and the CCC Intermediate Export Credit Guarantee Program (GSM-103) regulations (7 CFR Part 1493) to allow, upon CCC's approval, GSM-102 and GSM-103 coverage for freight and marine and war risk insurance if the commodity is sold to the foreign buyer on c&f or c.i.f. basis. This proposal would apply to all U.S. agricultural commodities and would permit the freight and marine and war risk insurance to be included in the port value of the commodity. Thus, the exporter or the exporter's assignee would be protected against loss on the commodity cost including the freight and marine and war risk insurance cost from defaults in payment by foreign banks due to commercial or noncommercial reasons when commodities are sold on deferred payment terms. The proposed rule proposed amendments to 7 CFR 1493.2 (f) and (o) to redefine "exported value" and "port value" to include on CCC's approval, freight and insurance for all agricultural commodities.

Comments

Sixty six Written comments were received from (a) various organizations and associations that promote exports of U.S. agricultural commodities, (b) exporters of various U.S. agricultural commodities, (c) financial institutions that finance export sales of U.S. agricultural commodities, (d) U.S. ports that handle exports of agricultural commodities, (e) State legislators and U.S. Senators and U.S. Representatives, (f) individuals interested in the promotion of agricultural commodities, and (g) a trade association that represents over 100 U.S. firms that underwrite marine and war risk insurance. In addition two comments were received by phone from the offices of two U.S. Representatives.

All of the above commentators, with one exception, fully supported the proposal and recommended that the proposal be implemented without qualification. The trade association representing U.S. underwriters of marine and war risk insurance suggested that the definition of "exported value" and "port value" should be redefined to make clear that marine and war risk insurance would only be covered if the sale was made on a c.i.f. basis. Without such clarification, this commentator felt the proposal could be interpreted to

mean that CCC would cover insurance even if the commodity was sold on a c&f basis. This commentator also urged that in order to avoid discrimination against American marine insurers by our trading partners that have imposed restrictions that prohibit American marine insurers from competing, CCC should require that the insurance be placed with only a company authorized to do business in one of the States of the United States. As an alternative, this commentator felt that CCC could adopt the policies employed by the Agency for International Development (AID). According to the commentator, AID requires that if the country receiving the aid from the United States discriminated against any marine insurance company authorized in the United States, then any AID financed commodity shipped to that country must be insured with a company in the United States.

CCC agrees that the definition of "exported value" and "port value" should be changed to make clear that marine and war risk insurance will only be covered on sales that are made on a c.i.f. basis. Accordingly, these changes are reflected in § 1493.2 (f) and (o). With respect to responding to restrictions on insurance from U.S. underwriters, it is CCC's position that this is more of a policy matter rather than a regulatory matter. The rule requires CCC's approval to include either freight or insurance costs in the port or exported value. Therefore, if CCC determines it appropriate in light of these concerns, CCC could require that GSM-102 or GSM-103 coverage would only cover sales made on f.a.s., f.o.b., or c & f basis.

List of Subjects in 7 CFR Part 1493

Agricultural commodities, Credit, Exports, Financing, Guarantees.

PART 1493—[AMENDED]

Accordingly, Part 1493, Subpart A, of Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart A of Part 1493 is revised to read as follows:

Authority: Sec. 5(f), Pub. L. 80-89, 62 Stat. 1072, as amended by Sec. 405(a), Pub. L. 98-623, 98 Stat. 3409 (15 U.S.C. 714c(f)); Sec. 4(b), Pub. L. 89-808, 80 Stat. 1537, as amended by Sec. 101, Pub. L. 95-501, 92 Stat. 1685 and Sec. 1131, Pub. L. 99-198, 99 Stat. 1486 (7 U.S.C. 1707a(b)); 15 U.S.C. 714b(d).

2. Section 1493.2 is amended by revising paragraphs (f) and (o) to read as follows:

§ 1493.2 Definition of terms.

* * * * *

(f) "Exported value" means the value of the commodity exported under the payment guarantee, f.a.s. or f.o.b. basis point of export, except that "exported value" may, upon approval by CCC, include freight costs for the commodity if the commodity is sold on c&f basis, and freight and marine and war risk insurance cost for the commodity if the commodity is sold on c.i.f. basis.

* * * * *

(o) "Port value" means the total value of the export credit sale, less any discounts or allowances, f.a.s. or f.o.b. basis at U.S. points of export. Port value may, upon approval by CCC, include freight costs for the commodity if the export credit sale is made c&f basis, less any discounts or allowances, and freight and marine and war risk insurance for the commodity if the commodity is sold on c.i.f. basis, less any discounts or allowances. Such values shall include the amount of the upward loading tolerance, if any, as provided for by the export credit sales contract.

* * * * *

Dated: May 1, 1987.

George J. Pope,

Acting General Sales Manager and Associate Administrator, FAS and Vice President, Commodity Credit Corporation.

[FR Doc. 87-10638 Filed 5-8-87; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ANE-13; Amdt. 39-5609]

Airworthiness Directives; Hamilton Standard Model 14SF-5 and 14SF-7 Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an initial and repetitive visual inspections for cracks, and replacement when needed, of the plastic "Rynite" blade retaining rings on Hamilton Standard 14SF-5 and 14SF-7 propellers. The AD is needed to prevent failure of the blade retaining rings, which could result in loss of the ring and severe damage to the blade retention system, with possible propeller unbalance.

DATES: Effective—May 21, 1987.

Compliance—As required in the body of the AD.

Comments for inclusion in the docket must be received on or before June 10, 1987.

Incorporation by Reference—Approved by the Director of the Federal Register on May 21, 1987.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87-ANE-13, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 87-ANE-13".

Comments may be inspected at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable alert service bulletin (ASB) may be obtained from Hamilton Standard Division of United Technologies Corporation, Windsor Locks, Connecticut 06096. A copy of the ASB is contained in Rules Docket Number 87-ANE-13, at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Martin Buckman, Aerospace Engineer, ANE-110, Engine and Propeller Standards Staff, Federal Aviation Administration, New England Region, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7079.

SUPPLEMENTARY INFORMATION: The FAA has determined that the plastic "Rynite" blade retaining rings on Hamilton Standard Model 14SF-5 and 14SF-7 propellers installed on, but not limited to, DeHavilland Dash 8 and Aerospatiale/Aeritalia ATR-42 aircraft are susceptible to cracks, which can result in loss of the retaining ring and possible damage to the blade retention system leading to severe vibration. There have been reports of at least 21 cracked or broken retaining rings. Since this condition is likely to exist or develop on other propellers of the same type design, an AD is being issued which requires an initial and repetitive visual inspections for cracks, with replacement when needed, of the plastic "Rynite" blade retaining rings on

Hamilton Standard 14SF–5 and 14SF–7 propellers.

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

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87–ANE–13". The postcard will be date/time stamped and returned to the commenter.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

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

Hamilton Standard: Applies to Hamilton Standard Model 14SF–5 and 14SF–7 propellers installed on, but not limited to, DeHavilland Dash 8 and Aerospatiale/Aeritalia ATR–42 aircraft.

Compliance is required within the next 50 hours time in service after the effective date of this AD unless already accomplished, and thereafter at intervals not to exceed 200 hours time in service.

To prevent loss of the plastic "Rynite" blade retaining rings, P/N 785540–1, and severe damage to the blade retention system with propeller unbalance, accomplish the following:

(a) Inspect the plastic "Rynite" blade retaining rings, P/N 785540–1, on all four blades in accordance with Hamilton Standard Alert Service Bulletin (ASB) 14SF–61–A21, Revision 2, dated March 27, 1987.

(b) Blade retaining rings with evidence of cracks require removal of both halves from service, prior to further flight, and replacement with new or serviceable retaining ring halves installed in accordance with Hamilton Standard ASB 14SF–61–A21, Revision 2, dated March 27, 1987.

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

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine and Propeller Standards Staff, ANE–110, Federal Aviation Administration, New England Region, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine and Propeller Standards Staff, ANE–110, may adjust the compliance time specified in this AD.

United Technologies, Hamilton Standard ASB 14SF–61–A21, Revision 2, dated March 27, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51. All persons affected by this directive, who have not already received this document from the manufacturer, may obtain copies upon request to Hamilton Standard Division of United Technologies Corporation, Windsor Locks, Connecticut 06096. This document also may be examined at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 87–ANE–13, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on May 21, 1987.

Issued in Burlington, Massachusetts, on April 14, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87–10602 Filed 5–8–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86–AWA–15]

Alteration of VOR Federal Airways; Nebraska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the descriptions of V–15, V–138, V–159 and V–172 located in the vicinity of Omaha, NE. The Neola, IA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) is being decommissioned and all airways that have Neola in their descriptions will require amendment. This action is due to the planned decommissioning of the Neola VORTAC as part of the Central Region's Networking Plan.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On April 28, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter

VOR Federal Airways V-15, V-138, V-159 and V-172 located in the vicinity of Omaha, NE, (51 FR 15789). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters VOR Federal Airways V-15, V-138, V-159 and V-172 located in the vicinity of Omaha, NE. The Neola, IA, VORTAC is being decommissioned and all airways that have Neola in their descriptions are being realigned.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-15 [Amended]

By removing the words "From St. Joseph, MO, via INT St. Joseph 343° and Neola, IA, 157° radials; Neola, INT Neola 322° and Sioux City, IA, 159° radials; Sioux City;" and substituting the words "From Sioux City, IA;"

V-138 [Amended]

By removing the words "; 1,200 feet AGL INT of Lincoln 040° and Neola, IA, 253° radials; Neola;" and substituting the words ". From Omaha, NE; INT Omaha 032° and Fort Dodge, IA, 222° radials;"

V-159 [Amended]

By removing the words "INT St Joseph 328° and Omaha, NE, 155° radials; Omaha;" and by substituting the words "Omaha, NE;"

V-172 [Amended]

By removing the words "Neola, IA; Newton, IA;" and substituting the words "Omaha, NE, INT Omaha 066° and Newton, IA, 262° radials; Newton;"

Issued in Washington, DC, on April 30, 1987.

Shelomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-10604 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASW-4]

Amendment of Transition Area: Winters, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area at Winters, TX. The intended effect of the amendment is to provide necessary controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Winters Municipal Airport, Winters, TX. This amendment is necessary since the Winters Nondirectional Radio Beacon (NDB) is being relocated and an amendment to the existing transition area is needed. This action will not significantly alter the existing controlled airspace at and above 700 feet above the ground, but will realign it to conform with the new SIAP.

EFFECTIVE DATE: 0901 UTC, June 10, 1987.

FOR FURTHER INFORMATION CONTACT: Robert P. Wheeler, Airspace and Procedures Branch (ASW-534), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On February 25, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Winters, TX, Transition Area (52 FR 6988).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Winters, TX, Transition Area to provide necessary controlled airspace at and above 700 feet above ground level for a new SIAP to the Winters Municipal Airport. This action is necessary due to the relocation of the Winters NDB. The intended effect of this action is to ensure segregation of aircraft using the new SIAP under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition Areas

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Winters, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Winters Municipal Airport, (latitude 31°56'45" N, longitude 99°59'08" W), and within 3.5 miles each side of the 174° bearing from the Winters NDB (latitude 31°56'45" N, longitude 99°59'13" W), extending from the 6.5-mile radius area to 8.5 miles south of the airport.

Issued in Fort Worth, TX, on April 23, 1987.

Larry L. Craig,

Assistant Manager, Air Traffic Division Southwest Region.

[FR Doc. 87-10603 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 84F-0416]

Indirect Food Additives; Paper and Paperboard Components

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 poly(diallyldimethylammonium chloride) in coatings for paper and paperboard used in contact with food. This action responds to a petition filed by Calgon Corp.

DATES: Effective May 11, 1987; objections by June 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: Marvin D. Mack, 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 February 25, 1985 (50 FR 7657), FDA announced that a petition (FAP 5B3833) had been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended in paragraph (a)(5) to provide for the safe use of poly(diallyldimethylammonium chloride) in coatings for paper and paperboard used in contact with food.

FDA has evaluated data in the petition and other relevant materials. The agency concludes that the proposed food additive use of poly(diallyldimethylammonium chloride) is safe, and that 21 CFR 176.170(a)(5) should be amended as set forth below. The agency is also making minor editorial changes in the regulation to clarify its intent.

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday throug Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before June 10, 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 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 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. In § 176.170(a)(5) by revising the entry for "Poly(diallyldimethylammonium chloride)" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * *	
Poly(diallyldimethylammonium chloride) (CAS Reg. No. 26062-79-3) produced by the polymerization of (diallyldimethylammonium chloride) so that the finished resin has a nitrogen content of 8.66 ± 0.4 percent on a dry weight basis and a minimum viscosity in a 40 percent by weight aqueous solution of 1,000 centipoises at 25 °C (77 °F), determined by LVF Model Brookfield Viscometer using a No. 3 spindle at 30 r.p.m. (or equivalent method). The level of residual monomer is not to exceed 1 percent by weight of the polymer (dry basis).	For use only: 1. As a pigment dispersant and/or retention aid prior to the sheet-forming operation in the manufacture of paper and paperboard, and used at a level not to exceed 10 pounds of active polymer per ton of finished paper and paperboard. 2. As a pigment dispersant in coatings at a level not to exceed 3.5 pounds of active polymer per ton of finished paper and paperboard.
* * * * *	

* * * * *

Dated: May 1, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-10616 Filed 5-8-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

[CGD87-008a]

Civil Penalty Procedures

May 6, 1987.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule revises the procedures followed in processing civil penalty cases for violations of the various laws enforced by the Coast Guard. The revisions were made necessary by the realignment of the Coast Guard districts and internal reorganization. Incident to the revisions required by organizational changes, the requirement for a second copy of a petition to reopen a hearing is eliminated and the timeframe for action on appeals is modified. These changes conform the rules to the reorganized Coast Guard structure.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: LCDR Michael S. Macie at the Marine Safety Council Staff, Commandant (G-CMC), U.S. Coast Guard, Washington, DC 20593-0001, telephone 202-267-1477.

SUPPLEMENTARY INFORMATION: Subpart 1.07 of Title 33, Code of Federal Regulations, describes the procedures for assessing a civil penalty in the case of a reported violation of law enforced by the Coast Guard. Under a recently announced realignment of Coast Guard districts and consolidation of Coast Guard support functions, the Civil Penalty Hearing Officer function for the Coast Guard districts within the Pacific Area is to be regionalized and made part of the Pacific Area Commander's staff. This amendment conforms the rules at Subpart 1.07 to reflect this internal realignment and consolidation.

Included in this amendment is new wording, replacing the first sentence to 33 CFR, § 1.07-10(b), to describe the internal processing of reports of violation investigations. Also changed is § 1.07-15(a), which presently refers specifically to the District Commander in the designation of Hearing Officers. With the reorganization, Civil Penalty Hearing Officers will be designated by both Area Commanders and District Commanders. Since the method of designation is an internal matter the first sentence to that section is unnecessary and it has been deleted.

Section 1.07-45 ("Location of hearings and change of venue.") has been amended by specifying that a change in venue can be initiated by the Hearing Officer or the party to a case.

To permit sufficient time for providing a copy of an appeal to the relevant District Commander, the time period under § 1.07-75 ("Action on appeals.") for review and comment has been increased from 20 to 30 days.

Section 1.07-80(b) has been changed to remove the requirement that a party submit a second copy of a petition to reopen a hearing. The opportunity for the District Commander to file comments in opposition has not been affected.

The statement of the delegation of authority for the collection of civil penalties previously found at § 1.07-85(a) has been removed. This delegation is made under 33 CFR 25.133. The remainder of § 1.07-85 has been renumbered, an inconsistency with § 1.07-70 has been corrected, and a statutory reference has been updated.

In addition, minor wording adjustments have been made to remove references to gender. None of the changes have any substantive effect.

A notice of proposed rulemaking has not been published and this rulemaking is being made effective in less than 30 days. The rulemaking simply conforms the procedures for processing civil penalties to agency organizational changes that are being made. Therefore, it is exempt from notice and comment under 5 U.S.C. 553(b). Since it is not a substantive rule, the provisions of 5 U.S.C. 553(d) do not apply and the rule may be effective on publication.

Regulatory Evaluation: This final rule is considered non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (49 FR 11034; February 26, 1979). As the revision has no substantive effect, the economic impact is so minimal that further evaluation is unnecessary. Since the economic impact of this final rule is minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 1

Administrative Practices and Procedures, Authority Delegations, Coast Guard, Freedom of Information, Penalties.

PART 1—[AMENDED]

In consideration of the foregoing, Subpart 1.07 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart 1.07 is revised to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.46.

2. In § 1.07-10, paragraph (b) is revised to read as follows:

§ 1.07-10 Reporting and investigation.

* * * * *

(b) Reports of any investigation conducted by the Coast Guard or received from any other agency which indicate that a violation may have occurred are forwarded to a District Commander for action. This is normally the District Commander of the District in which the violation is believed to have occurred, or the District in which the reporting unit or agency is found. The District Commander reviews the reports to determine if there is sufficient evidence to establish a *prima facie* case. If there is insufficient evidence, the case is either returned for further investigation or closed if further action is unwarranted. The case is closed in situations in which the investigation has established that a violation did not occur, the violator is unknown, or there is little likelihood of discovering additional relevant facts. If it is determined that a *prima facie* case does exist, a case file is prepared and forwarded to the Hearing Officer, with a recommended action. A record of any prior violations by the same person or entity, is forwarded with the case file.

3. In § 1.07-15, paragraph (a) is revised to read as follows:

§ 1.07-15 Hearing Officer.

(a) The Hearing Officer has no other responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties. The hearing officer may take action on a case referred by any District Commander.

* * * * *

4. Section 1.07-45 is revised to read as follows:

§ 1.07-45 Location of hearings and change of venue.

(a) The hearing is normally held at the office of the Hearing Officer.

(b) The Hearing Officer may transfer a case to another Hearing Officer on request or on the Hearing Officer's own motion.

(c) A request for change of location of a hearing or transfer to another Hearing Officer must be in writing and state the reasons why the requested action is

necessary or desirable. Action on the request is at the discretion of the Hearing Officer.

5. In § 1.07–75, paragraph (a) is revised to read as follows:

§ 1.07–75 Action on appeals.

(a) Upon receipt, the Hearing Officer provides a copy of the appeal and any supporting brief to the District Commander who referred the case. Any comments which the District Commander desires to submit must be received by the Hearing Officer within 30 days. The Hearing Officer includes the District Commander's comments, or not later than 30 days after receipt of the appeal if no comments are submitted by the District Commander, the Hearing Officer forwards all materials in the case to the Commandant.

* * * * *

6. In § 1.07–80, paragraph (b) is revised to read as follows:

§ 1.07–80 Reopening of hearings.

* * * * *

(b) Petitions to reopen must be in writing describing the newly found evidence and must state why the evidence would probably produce a different result favorable to the petitioner, whether the evidence was known to the petitioner at the time of the hearing and, if not, why the newly found evidence could not have been discovered in the exercise of due diligence. The party must submit the petition to the Hearing Officer.

* * * * *

7. Section 1.07–85 is revised to read as follows:

§ 1.07–85 Collection of civil penalties.

(a) Payment of a civil penalty may be made by check or postal money order payable to the U.S. Coast Guard.

(b) Within 30 days after receipt of the Commandant's decision on appeal, or the Hearing Officer's decision in a case in which no appeal has been filed, the party must submit payment of any assessed penalty to the office specified in the assessment notice. Failure to make timely payment will result in the insititution of appropriate action under the Federal Claims Collection Act and the regulations issued thereunder.

(c) When a penalty of not more than $200 has been assessed under Chapter 43 or 123 of Title 46 U.S.C., the matter may be referred for collection of the penalty directly to the Federal Magistrate of the jurisdiction wherein the person liable may be found, for the institution of collection procedures under supervision of the district court, if the court has issued an order delegating such authority under section 636(b) of Title 28, United States Code.

Dated: May 5, 1987.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard, Chairman, Marine Safety Council.

[FR Doc. 87–10650 Filed 5–8–87; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources; Correction

[AD–FRL–3196–9]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: A final rule amending the opacity provisions of 40 CFR Part 60, Subpart A, was published in the **Federal Register** (52 FR 9778) on March 26, 1987. As part of that amendment, paragraph (c) of § 60.13 was revised. However, the revision should have followed a redesignation of portions of the former § 60.13(c) as a new paragraph (j). Without this redesignation, portions of the former paragraph (c) were inadvertently deleted from § 60.13. Today's action corrects this error by adding the information that was deleted as a new paragraph (j) of § 60.13. The deleted information was orginally. added to § 60.13 on June 16, 1986 (51 FR 21762).

Also, as a result of today's redesignation, reference to § 61.13(c) in Appendix B, Performance Specification 2, are being revised to refer to § 61.13(j).

This action is necessary to correct an inadvertent deletion of a paragraph from 40 CFR Part 60, Subpart A that resulted from a final amendment to Subpart A that was published in the **Federal Register** on March 26, 1987 (52 FR 9778).

EFFECTIVE DATE: March 26, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, Standards Development Branch, ESED (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5568.

Dated: April 30, 1987

Don R. Clay,

Assistant Administrator for Air and Radiation.

PART 60—[AMENDED]

For reasons set out in the preamble, 40 CFR Part 60, § 60.13, and Appendix B, Performance Specification 2, are amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.13 is amended by adding paragraph (j) to read as follows:

§ 60.13 Monitoring requirements.

* * * * *

(j) An alternative to the relative accuracy test specified in Performance Specification 2 of Appendix B may be requested as follows:

(1) An alternative to the reference method tests for determining relative accuracy is available for sources with emission rates demonstrated to be less than 50 percent of the applicable standard. A source owner or operator may petition the Administrator to waive the relative accuracy test in section 7 of Performance Specification 2 and substitute the procedures in section 10 if the results of a performance test conducted according to the requirements in § 60.8 of this subpart or other tests performed following the criteria in § 60.8 demonstrate that the emission rate of the pollutant of interest in the units of the applicable standard is less than 50 percent of the applicable standard. For sources subject to standards expressed as control efficiency levels, a source owner or operator may petition the Administrator to waive the relative accurancy test and substitute the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the continuous emission monitoring system is used to determine compliance continuously with the applicable standard. The petition to waive the relative accurancy test shall include a detailed description of the procedures to be applied. Included shall be location and procedure for conducting the alternative, the concentration or response levels of the alternative RA materials, and the other equipment checks included in the alternative procedure. The Administrator will review the petition for completeness and applicability. The determination to grant

a waiver will depend on the intended use of the CEMS data (e.g., data collection purposes other than NSPS) and may require specifications more stringent than in Performance Specification 2 (e.g., the applicable emission limit is more stringent than NSPS).

(2) The waiver of a CEMS relative accuracy test will be reviewed and may be rescinded at such time following successful completion of the alternative RA procedure that the CEMS data indicate the source emissions approaching the level of the applicable standard. The criterion for reviewing the waiver is the collection of CEMS data showing that emissions have exceeded 70 percent of the applicable standard for seven, consecutive, averaging periods as specified by the applicable regulation(s). For sources subject to standards expressed as control efficiency levels, the criterion for reviewing the waiver is the collection of CEMS data showing that exhaust emissons have exceeded 70 percent of the level needed to meet the control efficiency requirement for seven, consecutive, averaging periods as specified by the applicable regulation(s) [e.g., §§ 60.45(g)(2) and (3), § 60.73(e), and § 60.84(e)]. It is the responsibility of the source operator to maintain records and determine the level of emissions relative to the criterion on the waiver of relative accuracy testing. If this criterion is exceeded, the owner or operator must notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increasing emissions. The Administrator will review the notification and may rescind the waiver and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

Appendix B [Amended]

3. Section 10.1 of Performance Specification 2 of Appendix B is revised to read as follows:

Performance Specification 2—Specifications and Test Procedures for SO_2 and NO_x Continuous Emission Monitoring Systems in Stationary Sources.

* * * * *

10 Alternative Procedures

10.1 Alternative to Relative Accuracy Procedure in section 7. Paragraphs 60.13(j) (1) and (2) contain criteria for which the reference method relative accuracy may be waived and the following procedure substituted.

* * * * *

[FR Doc. 87-10512 Filed 5-8-87; 8:45 am]

BILLING CODE 6560-50-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

45 CFR Ch. V

Revision of Agency Regulations

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Revision of regulations.

SUMMARY: The Foreign Claims Settlement Commission of the United States ("the Commission") herewith publishes a revision of its regulations, which appear as Parts 500 through 581 in Chapter V of Title 45 of the Code of Federal Regulations. These set forth the Commission's rules of practice, its organization, management and personnel regulations, and its rules governing receipt, administration and payment of claims. This revision is required to reflect changes which have occurred in the Commission's organization and adjudicatory authority, and to implement changes mandated by the Freedom of Information Reform Act of 1986. In addition, a number of provisions have been deleted as obsolete, others have been rewritten, and Part 500 has been expanded to include express rules for enforcement of the Ethics in Government Act.

EFFECTIVE DATE: June 10, 1987.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, 202-653-5883.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

The Commission has determined that these rules are exempt from the requirements of E.O. 12291, as they consist solely of "[r]egulations related to agency organization, management [and] personnel," within the meaning of subsection 1.(a)(3) of that Order.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities, as those terms are used in the Act. The activities and operations of the Commission do not affect or involve any appreciable segment of the community which small entities comprise.

List of Subjects

45 CFR Part 500

Administrative practice and procedure, Foreign claims.

45 CFR Part 501

Administrative practice and procedure, Foreign claims.

45 CFR Part 502

Conflict of interests.

45 CFR Part 503

Freedom of information.

45 CFR Part 504

Privacy, Sunshine Act.

45 CFR Part 505

War claims.

45 CFR Part 506

War claims.

45 CFR Part 507

Military personnel, Prisoners of war, Vietnam, War claims.

45 CFR Part 508

War claims.

45 CFR Part 509

Administrative practice and procedure, War claims.

45 CFR Part 531

Administrative practice and procedure, Foreign claims.

For the reasons set out in the preamble, the regulations of the Foreign Claims Settlement Commission, which are published as Chapter V of Title 45 of the Code of Federal Regulations are revised as follows:

CHAPTER V—FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES, DEPARTMENT OF JUSTICE

SUBCHAPTER A—RULES OF PRACTICE

Part

500 Appearance and practice
501 Subpoenas, depositions, and oaths
502 Employee responsibilities and conduct
503 Public information
504 Privacy Act and Government in the Sunshine regulations

SUBCHAPTER B—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER TITLE I OF THE WAR CLAIMS ACT OF 1948, AS AMENDED BY PUB. L. 91-289, APPROVED JUNE 24, 1970

505 Filing of claims and procedures therefor
506 Provisions of general application
507 Eligibility requirements for compensation
508 Payment
509 Hearings

SUBCHAPTER C—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949, AS AMENDED

531 Filing of claims and procedures therefor

SUBCHAPTER A—RULES OF PRACTICE

PART 500—APPEARANCE AND PRACTICE

Sec.

Authority: Sec. 2, Pub. L. 80–896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001); Sec. 3, Pub. L. 81–455, 64 Stat. 12, as amended (22 U.S.C. 1622); 18 U.S.C. 207.

§ 500.1 Appearance and representation.

(a) An individual may appear in his or her own behalf; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; an officer or employee of the United States Department of Justice, when designated by the Attorney General of the United States, may represent the United States in a claim proceeding.

(b) A person may be represented by an attorney at law admitted to practice in any State or Territory of the United States, or the District of Columbia.

(c) In cases falling within the purview of Subchapter B of this chapter, persons designated by veterans', service, and other organizations to appear before the Commission in a representative capacity on behalf of claimants shall be deemed duly authorized to practice before the Commission when the designating organization shall have been issued a letter of accreditation by the Commission. Petitions for accreditation shall be in writing, executed by duly authorized officer or officers, and addressed to the Foreign Claims Settlement Commission of the United States, Washington, DC 20579. Upon receipt of a petition setting forth pertinent facts as to the organization's history, purpose, number of posts or chapters and their locations, approximate number of paid-up memberships, statements that the organization will not charge any fee for services rendered by its designees in behalf of claimants and that it will not refuse on the grounds of non-membership to represent any claimant who applies for such representation if such claimant has an apparently valid claim, accompanied by a copy of the organization's constitution, or charter, by-laws, and its latest financial statement, the Commission in its discretion will consider and in appropriate cases issue or deny letters of accreditation.

(d) A person may not be represented before the Commission except as authorized in paragraphs (a), (b), and (c) of this section.

§ 500.2 Notice of entry or withdrawal of counsel in claims.

(a) Counsel entering an appearance in a claim originally filed by a claimant in the claimant's behalf, or upon request for a substitution of attorneys, shall be required to file an authorization by such claimant.

(b) When counsel seeks to withdraw from the prosecution of a claim, it must appear that the client (claimant) has been duly notified.

(c) When a claimant advises the Commission that counsel no longer represents such claimant, a copy of the Commission's acknowledgement shall be forwarded to such counsel.

§ 500.3 Fees.

(a) No remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within the purview of Subchapter B of this chapter shall exceed ten per centum of the amount allowed on account of such claim, except that the Commission in its discretion may fix a lesser per centum with respect to any claim filed thereunder.

(b) The total remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within title I of the International Claims Settlement Act of 1949, as amended, shall not exceed ten per centum of the total amount paid on account of such claim.

§ 500.4 Suspension of attorneys.

(a) The Commission may disqualify, or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found after a hearing in the matter—

(1) Not to possess the requisite qualifications to represent others before the Commission; or

(2) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(3) To have violated sections 10 and 214 of the War Claims Act of 1948, as amended, or section 4(f) of the International Claims Settlement Act of 1949, as amended, or § 500.3 of Part 500 of these regulations.

(b) Contemptuous or contumacious conduct at any hearing shall be ground for exclusion from said hearing and for summary suspension without a hearing for the duration of the hearing.

§ 500.5 Disqualification of former employees; disqualification of partners of current employees.

(a) No member, officer or employee of the Commission, including a special Government employee shall, after employment has ceased, knowingly act as an agent or attorney for, or otherwise represent, any person or party (other than the United States) in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any person or party (other than the United States) (1) to the Commission or any other department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, (2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and (3) in which such member, officer, employee, or special Government employee, participated personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed.

(b) No member, officer, or employee of the Commission, including a special Government employee, shall, within two years after employment has ceased, knowingly act as agent or attorney for, or otherwise represent, any person or party (other than the United States) in any formal or informal appearance before, or with intent to influence, make any oral or written communication on behalf of any person or party (other than the United States) (1) to an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, (2) in connection with any matter enumerated and described in paragraph (a)(2) of this section, and (3) which was actually pending under his or her official responsibility as an employee within a period of one year prior to the termination of such responsibility.

(c) No member, officer, or employee of the Commission, including a special Government employee, in an executive level position, in a position with a comparable or greater rate of pay, or in a position that involved significant decision making or supervisory

responsibility as designated by the Director of the Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within two years after employment has ceased, knowingly represent or aid, counsel, advise, consult or assist in representing any person or party (other than the United States) by personal presence at any formal or informal appearance before (1) an organization enumerated in paragraph (a)(1) of this section, or an officer or employee thereof, (2) in connection with any matter enumerated and described in paragraph (a)(2) of this section, and (3) in which he or she participated personally or substantially as an employee (18 U.S.C. 207(b)(ii)).

(d) No member, officer, or employee of the Commission other than a special Government employee with service of less than sixty days in a given calendar year, who has been an employee in an executive level position or a position with a comparable or greater rate of pay, or in a position which involved significant decision making or supervisory responsibility as designated by the Director of Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within one year after such employment has ceased, knowingly engage in conduct described in the next sentence. The prohibited knowing conduct is that of acting as attorney or agent for, or otherwise representing anyone other than the United States, in any formal or informal appearance before, or with the intent to influence, making any oral or written communication on behalf of anyone other than the United States (1) to the Commission, or any employee thereof, (2) in connection with any rulemaking or any matter enumerated and described in paragraph (a)(2) of this section and (3) which is pending before the Commission or in which it has a direct and substantial interest.

(e) No partner of an employee shall act as agent or attorney for anyone other than the United States before an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, in connection with any matter enumerated and described in paragraph (a)(2) of this section in which such Government employee is participating or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his or her official responsibility.

§ 500.6 Disciplinary proceedings against former employees.

(a) Upon a determination by the Commission's Designated Ethics Officer, after investigation, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, has violated 18 U.S.C. 207 (a), (b) or (c), the Designated Ethics Officer shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former employee to show cause within a specified time of not less than 30 days after receipt of the notice why he or she should not be prohibited from engaging in representational activities in relation to matters pending before the Commission, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate disciplinary action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their basis, sufficiently detailed to enable the former employee to prepare an adequate defense;

(2) Notification of the right to a hearing; and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former employee who submits an answer to the notice to show cause does not request a hearing or if the Designated Ethics Officer does not receive an answer within five days after the expiration of the time prescribed by the notice, the Designated Ethics Officer shall forward the record, including the report(s) of investigation, to the Chairman. In the case of a failure to answer, such failure shall constitute a waiver of defense.

(c) Upon receipt of a former employee's request for a hearing, the Designated Ethics Officer shall notify him or her of the time and place thereof, giving due regard both to such person's need for an adequate period to prepare a suitable defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(d) The presiding officer at the hearing and any related proceedings shall be a federal administrative law judge or other federal official with comparable duties. The presiding officer shall insure that the former employee has, among others, the rights:

(1) To self-representation or representation by counsel;

(2) To introduce and examine witnesses and submit physical evidence;

(3) To confront and cross-examine adverse witnesses;

(4) To present oral argument; and

(5) To a transcript or recording of the proceedings, upon request.

(e) The Designated Ethics Officer shall designate one or more officers or employees of the Commission to present the evidence against the former employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former employee must be sustained by substantial evidence that he or she violated 18 U.S.C. 207 (a), (b) or (c).

(g) The presiding officer shall issue an initial decision based exclusively on the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, and shall set forth in the decision findings and conclusions, supported by reasons, on the material issues of fact and law presented on the record.

(h) Within 30 days after issuance of the initial decision, either party may appeal to the Chairman, who in that event shall issue the final decision based on the record of the proceedings or those portions thereof cited by the parties to limit the issues. If the final decision modifies or reverses the initial decision, the Chairman shall specify the findings of fact and conclusions of law that vary from those of the presiding officer.

(i) If a former employee fails to appeal from an adverse initial decision within the prescribed period of time, the presiding officer shall forward the record of the proceedings to the Chairman.

(j) In case of a former employee who filed an answer to the notice to show cause but did not request a hearing, the Chairman shall make the final decison on the record submitted by the Designated Ethics Officer pursuant to subsection (b) of this section.

(k) The Chairman, in a case where:

(1) The defense has been waived;

(2) The former employee has failed to appeal from an adverse initial decision; or

(3) The Chairman has issued a final decision that the former employee violated 18 U.S.C. 207 (a), (b) or (c) may issue an order:

(i) Prohibiting the former employee from making on behalf of any person or party (other than the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or

(ii) Prescribing other appropriate disciplinary action.

PART 501—SUBPOENAS, DEPOSITIONS, AND OATHS

Sec.
501.1 Extent of authority.
501.2 Subpoenas.
501.3 Service of process.
501.4 Witnesses.
501.5 Depositions.
501.6 Documentary evidence.
501.7 Time.

Authority: Sec. 2, Pub. L. 80–896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001); sec. 3, Pub. L. 81–455, 64 Stat. 12, as amended (22 U.S.C. 1622).

§ 501.1 Extent of authority.

(a) *Subpoenas, oaths and affirmations.* The Commission or any member thereof may issue subpoenas, administer oaths and affirmations, take affidavits, conduct investigations and examine witnesses in connection with any hearing, examination, or investigation within its jurisdiction.

(b) *Certification.* The Commission or any member thereof may, for the purpose of any such hearing, examination, or investigation, certify the correctness of any papers, documents, and other matters pertaining to the administration of any laws relating to the functions of the Commission.

§ 501.2 Subpoenas.

(a) *Issuance.* A member of the Commission or a designated employee may, on such member or employee's own volition of upon written application by any party and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring persons to appear and testify or to appear and produce documents. Applications for issuance of subpoenas duces tecum shall specify the books, records, correspondence, or other documents sought. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) *Deposit for costs.* The Commission or designated employee, before issuing any subpoena in response to any application by an interested party, may require a deposit in an amount adequate to cover fees and mileage involved.

(c) *Motion to quash.* If any person subpoenaed does not intend to comply with the subpoena, such person shall, within 15 days after the date of service of the subpoena, petition in writing to quash the subpoena. The basis for the motion must be stated in detail. Any party desiring to file an answer to a motion to quash must file such answer not later than 15 days after the filing of the motion. The Commission shall rule on the motion to quash, duly recognizing any answer thereto filed. The motion, answer, and any ruling thereon shall become part of the official record.

(d) *Appeal from interlocutory order.* An appeal may be taken to the Commission by the interested parties from the denial of a motion to quash or from the refusal to issue a subpoena for the production of documentary evidence.

(e) *Order of court upon failure to comply.* Upon the failure or refusal of any person to comply with a subpoena, the Commission may invoke the aid of the United States District Court within the jurisdiction of which the hearing, examination or investigation is being conducted, or wherein such person resides or transacts business. Such court, pursuant to the provisions of Pub. L. 81–696, approved August 16, 1950 (50 U.S.C. App. 2001(d)), may issue an order requiring such person to appear at the designated place of hearing, examination or investigation, then and there to give or produce testimony or documentary evidence concerning the matter in question. Any failure to obey such an order may be punished by the court as a contempt thereof. All processes in any such case may be served in the judicial district wherein such person resides or transacts business or wherever such person may be found.

§ 501.3 Service of process.

(a) *By whom served.* The Commission shall serve all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve.

(b) *Kinds of service.* Subpoenas, orders, rulings, and other processes of the Commission may be served by delivering in person, by first class or registered mail, or by telegraph or by publication.

(c) *Personal service.* Service by delivering in person may be accomplished by:

(1) Delivering a copy of the document to the person to be served, to a member of the partnership to be served, to an executive officer or a director of the corporation to be served, or to a person competent to accept service; or

(2) By leaving a copy thereof at the residence, principal office or place of business of such person, partnership, or corporation.

(3) Proof of service. The return receipt for said order, other process or supporting papers, or the verification by the person serving, setting forth the manner of said service, shall be proof of the service of the document.

(4) Service upon attorney or agent. When any party has appeared by an authorized attorney or agent, service upon such attorney or agent shall be deemed service upon the party.

(d) *Service by first class mail.* Service by first class mail shall be regarded as complete upon deposit in the United States mail properly stamped and addressed.

(e) *Service by registered mail.* Service by registered mail shall be regarded as complete on the date the return post office registered receipt for said orders, notices and other papers is received by the Commission.

(f) *Service by telegraph.* Service by telegraph shall be regarded as complete when deposited with a telegraph company properly addressed and with charges prepaid.

(g) *Service by publication.* Service by publication is completed when due notice shall have been given in the publication for the time and in the manner provided by law or rule.

(h) *Date of service.* The date of service shall be the day upon which the document is deposited in the United States mail or delivered in person, as the case may be.

(i) *Filing with Commission.* Papers required to be filed with the agency shall be deemed filed upon actual receipt by the Commission accompanied by proof of service upon parties required to be served. Upon such actual receipt the filing shall be deemed complete as of the date of deposit in the mail or with the telegraph company as provided in paragraphs (e) and (f) of this section.

§ 501.4 Witnesses.

(a) *Examination of witnesses.* Witnesses shall appear in person and be examined orally under oath, except that for good cause shown, testimony may be taken by deposition.

(b) *Witness fees and mileage.* Witnesses summoned by the Commission on its own behalf or on behalf of a claimant or interested party shall be paid the same fees and mileage that are allowed and paid witnesses in the District Courts of the United States. Witness fees and mileage shall be paid by the Commission or by the party at whose request the witness appears.

(c) *Transcript of testimony.* Every person required to attend and testify or to submit documents or other evidence shall be entitled to retain or, on payment of prescribed costs, procure a copy of the transcript of the testimony or the documents produced.

§ 501.5 Depositions.

(a) *Application to take.* (1) An application to take a deposition shall be in writing setting forth the reason why such deposition should be taken, the

name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken. If such deposition is being offered in connection with a hearing or examination, the application for deposition shall be made to the Commission at least 15 days prior to the proposed date of such hearing or examination.

(2) Application to take a deposition may be made during a hearing or examination, or subsequent to a hearing or examination, only where it is shown for good cause that the facts as set forth in the application to take the deposition were not within the knowledge of the person signing the application prior to the time of the hearing or examination.

(3) The Commission or its representative shall, upon receipt of the application and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before entative shall, upon receipt of the application and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before whom the witness is to testify. Such officer may or may not be the one specified in the application. The order shall be served upon all parties at least 10 days prior to the date of the taking of the deposition.

(b) *Who may take.* Such deposition may be taken before the designated officer or, if none is designated, before any officer authorized to administer oaths by the laws of the United States. If the examination is held in a foreign country, it may be taken before a secretary of an embassy or legislation, consul-general, consul, vice consul, or consular agent of the United States.

(c) *Examination and certification of testimony.* At the time and place specified in said order the officer taking such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony shall be reduced to writing by, or under the direction of, the presiding officer. All objections to questions or evidence shall be deemed waived unless made in accordance with paragraph (d) of this section. The officer shall not have power to rule upon any objections but shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach a certificate stating that the witness was duly sworn, that the deposition is a true record of the testimony and exhibits given by the witness and that said officer is not counsel or attorney to any of the interested parties. The officer shall immediately seal and deliver an original and two copies of said transcript, together with the officer's certificate, by registered mail to the Foreign Claims Settlement Commission, Washington, DC 20579 or to the field office designated.

(d) *Admissibility in evidence.* The deposition shall be admissible in evidence, subject to such objections to the questions and answers as were noted at the time of taking the deposition, or within ten (10) days after the return thereof, and would be valid were the witness personally present at the hearing.

(e) *Errors and irregularities.* All errors or irregularities occurring shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(f) *Scope of use.* The deposition of a witness, if relevant, may be used if the Commission finds:

(1) That the witness has died since the deposition was taken; or

(2) that the witness is at a distance greater than 100 miles radius of Washington, DC, the designated field office or the designated place of the hearing; or

(3) that the witness is unable to attend because of other good cause shown.

(g) *Interrogatories and cross-interrogatories.* Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examinations. When a deposition is taken upon interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, such person's representative or attorney, a stenographic reporter and the presiding officer, shall be present at the examination of the witness, which fact shall be certified by such officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

(h) *Fees.* A witness whose deposition is taken pursuant to the regulations in this Part, and the officer taking the deposition, shall be entitled to the same fees and mileage allowed and paid for like service in the United States District Court for the district in which the deposition is taken. Such fees shall be paid by the Commission or by the party at whose request the deposition is being taken.

§ 501.6 Documentary evidence.

Documentary evidence may consist of books, records, correspondence or other documents pertinent to any hearing, examination, or investigation within the jurisdiction of the Commission. The application for the issuance of subpoenas duces tecum shall specify the books, records, correspondence or other documents sought. The production of documentary evidence shall not be required at any place other than the witness' place of business. The production of such documents shall not be required at any place if, prior to the return date specified in the subpoena, such person either has furnished the issuer of the subpoena with a properly certified copy of such documents or has entered into a stipulation as to the information contained in such documents.

§ 501.7 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by the regulations, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

(b) *Enlargement.* When by the regulations in this chapter or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discretion (1) with or without motion, notice, or previous order or (2) upon motion, permit the act to be done after the expiration of the specified period.

PART 502—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.

Sec.
502.4 Gifts, entertainment, and favors.
502.5 Outside employment and other activity.
502.6 Specific provisions of agency regulations governing special Government employees.
502.7 Statements of employment and financial interests.
502.8 Supplementary statements.

Authority: E.O. 11222 of May 8, 1965, 3 CFR, 1965, Supp., p. 130; 5 CFR 735.101 et seq.

§ 502.1 Adoption of regulations.

Pursuant to 5 CFR 735.104(f), the Foreign Claims Settlement Commission of the United States (referred to hereinafter as "the Commission") hereby adopts the following sections of Part 735 of Title 5, Code of Federal Regulations: §§ 735.101–102, 735.201a, 735.202 (a), (d), (e), (f) through 735.210, 735.303(a), 735.304, 735.305(a), 735.403(a), 735.404, 735.405, 735.407 through 735.411, 735.412 (b) and (d). These adopted sections are modified and supplemented as set forth in this part.

§ 502.2 Review of statements of employment and financial interests.

Each statement of employment and financial interests submitted under this Part shall be reviewed by the Commission's Designated Ethics Officer. When this review indicates a conflict between the interests of an employee or special Government employee of the Commission and the performance of such employee's services for the Government, the Designated Ethics Officer shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and attempt to resolve the indicated conflict. If the indicated conflict cannot be resolved, the Designated Ethics Officer shall forward a written report on the indicated conflict to the Chairman of the Commission through the counselor for the agency designated under 5 CFR 735.105(a).

§ 502.3 Disciplinary and other remedial action.

An employee or special Government employee of the Commission who violates any of the regulations in this part or adopted under § 502.1 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee of the employee's conflicting interest; or

(c) Disqualification for a particular assignment.

§ 502.4 Gifts, entertainment, and favors.

The Commission authorizes the exceptions to 5 CFR 735.202(a) set forth in 5 CFR 735.202(b) (1)–(4).

§ 502.5 Outside employment and other activity.

An employee of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of such employee's Government employment; *Provided, however,* That no professional officer or employee of the Commission shall engage in the private practice of such officer or employee's profession, and no officer or employee, regardless of the nature of his or her duties with the Commission, shall engage in the private practice of law, except upon the prior approval in writing by the Chairman of the Commission.

§ 502.6 Specific provisions of agency regulations governing special Government employees.

(a) Special Government employees of the Commission shall adhere to the standards of conduct applicable to employees as set forth in this part and adopted under § 502.1, except 5 CFR 735.203(b).

(b) Special Government employees of the Commission may teach, lecture, or write in a manner not inconsistent with 5 CFR 735.203(c).

(c) Pursuant to 5 CFR 735.305(b), the Commission authorizes the same exceptions concerning gifts, entertainment, and favors for special Government employees as are authorized for employees by § 502.4.

§ 502.7 Statements of employment and financial interests.

(a) In addition to the employees required to submit statements of employment and financial interests under 5 CFR 735.403(a), attorneys in charge of divisions shall submit statements of employment and financial interests.

(b) Each statement of employment and financial interests required by this section shall be submitted to the Chairman of the Commission.

(c) An employee who believes that his or her position has been improperly included in this section as one requiring the submission of a statment of employment and financial interests may obtain a review thereof under the Commission's grievance procedure.

§ 502.8 Supplementary statements.

Notwithstanding the filing of the annual supplementary statement required by 5 CFR 735.406, each employee shall at all times avoid acquiring a financial interst that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code, or the regulations in this part or adopted under § 502.1.

PART 503—PUBLIC INFORMATION

Sec.
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Authority: 5 U.S.C. 552.

§ 503.1 Organization and authority—Foreign Claims Settlement Commission.

(a) The Foreign Claims Settlement Commission of the United States ("the Commission") is an independent agency of the Federal Government created by Reorganization Plan No. 1 of 1954 (68 Stat. 1279) effective July 1, 1954. The Commission was transferred to the Department of Justice as an independent agency within that Department as of October 1, 1980, under the terms of Pub. L. 96–209, approved March 14, 1980 (94 Stat. 96, 22 U.S.C. 1622c). Its duties and authority are defined in the International Claims Settlement Act of 1949, as amended (64 Stat. 12, 22 U.S.C. 1621–1645o) and the War Claims Act of 1948 (62 Stat. 1240, 50 U.S.C. App. 2001–2017p).

(b) The Commission has jurisdiction to determine claims of United States nationals against foreign governments for compensation for losses and injuries sustained by such nationals, pursuant to programs which may be authorized under either of said Acts. Available funds have their sources in international settlements or liquidation of foreign assets in this country by the Department of Justice or Treasury, and from public funds when provided by the Congress.

(c) The Chairman and the two part-time members of the Commission are

appointed by the President with the advice and consent of the Senate to serve for 3-year terms of office as provided by Pub. L. 96–209, *supra*.

(d) All functions of the Commission are vested in the Chairman with respect to the internal management of the affairs of the Commission, including but not limited to:

(1) The appointment of personnel employed under the Commission;

(2) The direction of employees of the Commission and the supervision of their official duties;

(3) The distribution of business among employees and organizational units under the Commission;

(4) The preparation of budget estimates; and

(5) The use and expenditures of funds of the Commission available for expenses of administration.

(e) Requests for records shall be made in writing by mail or presented in person to the Administrative Officer, Foreign Claims Settlement Commission, Washington, DC, 20579.

(f) The offices of the Commission are located at 1111 20th Street NW. (Vanguard Building), 4th Floor, Washington, DC.

§ 503.2 Material to be published in the Federal Register pursuant to Pub. L. 89–487.

The Commission shall separately state and concurrently publish the following materials in the **Federal Register** for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions.

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(e) Every amendment, revision, or repeal of the foregoing.

§ 503.3 Effect of nonpublication.

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by, any matter required to be published in the **Federal Register** and not so published.

§ 503.4 Incorporation by reference.

For purposes of this Part, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register.

§ 503.5 Records generally available.

The Commission will make promptly available to any member of the public the following documents:

(a) Proposed and Final Decisions (including dissenting opinions) and all orders made with respect thereto;

(b) Statements of policy and interpretations which have been adopted by the Commission which have not been published in the **Federal Register**; and

(c) A current index, which shall be updated at least quarterly, covering the foregoing material adopted, issued or promulgated after July 4, 1967. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available upon request for a fee of the direct cost of duplication.

§ 503.6 Current index.

The Commission shall maintain and make available for public inspection and copying, current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, as required by 5 U.S.C. 552(a)(2).

§ 503.7 Additional documents and records generally available for inspection and copying.

The following kinds of documents are also available for inspection and copying in the offices of the Commission:

(a) Rules of practice and procedure.

(b) Annual report of the Commission to the Congress of the United States.

(c) Bound volumes of Commission decisions.

(d) International Claims Settlement Act of 1949, with amendments; the War Claims Act of 1948, with amendments; and related Acts.

(e) Claims agreements with foreign governments effecting the settlement of claims under the jurisdiction of the Commission.

(f) Press releases and other miscellaneous material concerning Commission operations.

(g) Indexes of claims filed under the various claims programs administered by the Commission.

§ 503.8 Effect of noncompliance.

No decision, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this Part, or unless that private party shall have actual and timely notice of the terms thereof.

§ 503.9 Availability of records.

(a) Each person desiring access to a record covered by this Part must comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request must indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent must be prominently marked with the letters "FOIA".

(4) The request must be addressed to the appropriate official or employee of the Commission as set forth in paragraph (c) of this section.

(5) The foregoing requirements must be complied with whether the request is mailed or hand-delivered to the Commission.

(b) If the requirements of paragraph (a) of this section are not met, the ten day time limit described in § 503.10(a) will not begin to run until the request has been identified by an official or employee of the Commission as a request under the Freedom of Information Act and has been received by the appropriate official or employee of the Commission.

(c) Each person desiring access to a record covered in this Part that is located in the Commission, or to obtain a copy of such a record, must make a written request to the Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

(d) Each request should reasonably describe the particular record requested. The request should specify the subject matter, the date when it was made and the person or office that made it. If the description is insufficient, the official or employee handling the request may notify the person making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this section is available for inspection and copying during regular working hours. Original documents may be copied but may not be released from custody.

(f) Authority to administer this part in connection with Commission records is delegated to the Administrative Officer or the Commission employee acting in that official's capacity.

§ 503.10 Actions on requests.

(a) The Administrative Officer or any employee acting in that official's capacity shall determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request. Upon receipt of a request for a Commission record which is available, the Administrative Officer or other employee shall notify the requester as to the time the record is available, and shall promptly make the record available after advising such requester of the applicable fees under § 503.13. The person making such request shall be notified immediately after any adverse determination, the reasons for making such adverse determination and the right of such person to appeal.

(b) Any denial of a request for a record shall be written and signed by the Administrative Officer or other employee, including a statement of the reason for denial. Such statement shall contain, as applicable:

(1) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of a record, and to the extent consistent with the purpose of the exemption, an explanation of how the exemption applies to the record withheld.

(2) If a record requested does not exist or has been legally disposed of, the requester shall be so notified.

(c) In unusual circumstances, the time limit prescribed in paragraph (a) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request——

(1) The need to search for and collect the requested records from other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) With respect to determinations on appeals, such determinations shall be made within twenty days (excepting Saturdays, Sundays, and legal holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is in whole or in part upheld, the person making such request shall be notified of the provisions for judicial review of that determination under section 552(a)(4) of Title 5, United States Code.

§ 503.11 Appeals.

(a) Any person to whom a record has not been made available within the time limits established by paragraph (d) of § 503.10, and any person who has been given an adverse determination pursuant to paragraph (b) of § 503.10, that a requested record will not be disclosed, may apply to the Chairman of the Commission, or in the Chairman's absence an officer or employee designated by the Chairman, for reconsideration of the request. A determination that a record will not be disclosed is not administratively final for the purpose of judicial review unless it was made by the Chairman or Chairman's designee, unless the applicable time limit has passed without a determination of the appeal having been made.

(b) Each application for reconsideration must be made in writing within thirty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. Such application must indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters "FOIA". If these requirements are not met, the twenty day limit described in § 503.10 will not begin to run until the application has been identified as an application under the Freedom of Information Act and has been received by the appropriate office.

(c) Whenever it is to be determined necessary, the person making the request may be required to furnish additional information, or proof of factual allegations and other proceedings appropriate in the circumstances may be ordered. The decision of the Chairman or Chairman's designee as to the availability of the record is administratively final.

(d) The decision not to disclose a record under this Part is considered to be a withholding for the purposes of section 552(a)(3) of Title 5, United States Code.

§ 503.12 Exemptions.

In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section. Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information may pertain, and the disclosure is not prohibited by law or Executive Order. The following categories of records are exempt from disclosure under the provisions of 5 U.S.C. 552(b):

(a) Records which are specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under Executive Order.

(b) Records related solely to the internal personnel rules and practices of the Commission.

(c) Records specifically exempted from disclosure by statute.

(d) Information given in confidence. This includes information obtained by or given to the Commission which constitutes confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include inter-agency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission and its staff regarding the preparation of Commission decisions, other documents received or generated in the process of issuing a decision or

regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(f) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 503.13 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 dumplications 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 is 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) above, 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 above 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.

(j) *Waiver or reduction of charges.* Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where—

(1) It is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or

(2) It is determined that the cost of collection would be equal to or exceed the amount of such fees. No charges shall be assessed if such fees amount to $8.00 or less.

PART 504—PRIVACY ACT AND GOVERNMENT IN THE SUNSHINE REGULATIONS

Subpart A—Privacy Act Regulations

Subpart B—Government in the Sunshine Regulations

Subpart A—Privacy Act Regulations

Authority: 5 U.S.C. 552a(f).

§ 504.1 Definitions—Privacy Act.

For the purpose of this part:

"Agency" includes any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President) or any independent regulatory agency. The Foreign Claims Settlement Commission ("Commission") is an "agency" within the meaning of the term.

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

"Maintain" includes maintain, collect, use or disseminate.

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, an individual's education, financial transactions, medical history, and criminal or employment history, and that contains an individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

"Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

"Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual except as provided by section 8 of Title 13, United States Code.

"System of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 504.2 General policies—Privacy Act.

The Commission will protect the privacy of an individual identified in any information or record systems which it maintains. Accordingly, its officials and employees, except as otherwise provided by law or regulation, will:

(a) Permit an individual to determine what records pertaining to such individual are collected, maintained, used or disseminated by the Commission.

(b) Permit an individual to prevent a record pertaining to such individual obtained by the Commission for a particular purpose from being used or made available for another purpose without the individual's consent.

(c) Permit an individual to gain access to information pertaining to such individual in Commission records, to have a copy made of all or any portion thereof, and to correct or amend such records.

(d) Collect, maintain, use, or disseminate any record of indentifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(e) Permit exemptions from record requirements provided under the Privacy Act only where an important public policy use for such exemption has been determined in accordance with specific statutory authority.

§ 504.3 Conditions of disclosure.

The Commission will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request of or prior written consent of the individual to whom the record pertains unless such disclosure is:

(a) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use;

(d) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13, United States Code;

(e) To a recipient who has provided the Commission with adequate advance assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government or for evaluation to determine whether the record has such value;

(g) To another agency or to an instrumentality of any government jurisdiction within or under control of the United States for a civil or ciminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Commission, specifying the particular record and the law enforcement activity for which it is sought;

(h) To a person purusant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure, notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of that official's authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

§ 504.4 Accounting of certain disclosures.

(a) Except for disclosures under § 504.3 (a) and (b) of this Part, the Administrative Officer shall keep an accurate accounting of each disclosure of a record to any person or to another agency made under § 504.3 (c), (d), (e), (f), (g), (h), (i), (j), and (k) of this part.

(b) Except for a disclosure made to another agency or to an instrumentality of any governmental jursidiction under § 504.3(g) of this part, the Administrative Officer shall make the accounting as required under paragraph (a) of this section available to any individual upon written request made in accordance with § 504.5.

(c) The administrative Officer shall inform any person or other agency about any correction or notation of dispute made in accordance with § 504.7 of this part of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) An accounting of disclosures of records within this section shall consist of the date, nature, the purpose of each disclosure of a record to any person or to another agency, and the name and address of the person or agency to whom the disclosure is made.

(e) Such accounting shall be retained for 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

§ 504.5 Access to records or information

(a) Upon request in person or by mail, any individual shall be informed whether or not a system of records maintained by the Commission contains a record or information pertaining to such individual.

(b) Any individual requesting access to such record or information in person shall appear in person at the offices of the Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 400, Washington, DC., between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, and

(1) Provide information sufficient to identify the record, e.g., the individual's own name, claim and decision number, date and place of birth, etc.;

(2) Provide identification to verify the individual's identity, e.g., driver's licensee, identification or Medicare card; and

(3) Any individual requesting access to records or information pertaining to such individual may be accompanied by a person of the individual's own choosing while reviewing the record thereof. If an individual elects to be so accompanied, advance notification of the election shall be required along with a written statement authorizing disclosure and discussion of the record in the presence of the accompanying person at any time, including the time access is granted.

(c) Any individual making a request for access to records or information pertaining to such individual by mail shall address such request to the Administrative Officer (Privacy Officer), Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579, and shall provide information acceptable to the Administrative Officer to verify the individual's identity.

(d) Responses to requests under this section normally will be made within ten (10) days of receipt (excluding Saturdays, Sundays, and legal holidays). If it is not possible to respond to requests within such period, an acknowledgement will be sent to the individual within ten (10) days of receipt of the request (excluding Saturdays, Sundays, and legal holidays).

§ 504.6 Determination of requests for access to records.

(a) Upon request made in accordance with § 504.5, the Administrative Officer shall:

(1) Determine whether or not such request will be granted;

(2) Make such determination and provide notification within a reasonable period of time after receipt of such request.

(b) If access to a record is denied because information has been compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding, the Administrative Officer shall notify the individual of such determination and the reason therefor.

(c) If access to the record is granted, the individual making such request shall notify the Administrative Officer whether the records requested are to be copied and mailed to the individual.

(d) If records are to be made available for personal inspection, the individual shall arrange with the Administrative Officer a mutually agreeable time and place for inspection of the record.

§ 504.7 Amendment of a record.

(a) Any individual may request amendment of a record pertaining to such individual according to the procedure in paragraph (b) of this section except those records described under paragraph (d) of this section.

(b) After inspection by an individual of a record pertaining to such individual, he or she may file a written request, presented in person or by mail, with the Administrative Officer, for an amendment to a record. Such request shall specify the particular portions of the record to be amended, the desired amendments and the reasons therefor.

(c) Not later than 10 days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a request made in accordance with this section to amend a record in whole or in part, the Administrative Officer shall:

(1) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or

(2) Inform the individual, by certified mail return receipt requested, of the refusal to amend such record, setting forth the reasons therefor, and notify the individual of the right to appeal that determination as provided under § 504.8 of this part.

(d) The provisions for amending records do not permit the alteration of evidence presented in the course of Commission proceedings in the adjudication of claims, nor do they permit collateral attack upon what has already been subject to final agency action in the adjudication of claims in programs previously completed by the Commission pursuant to statutory time limitations.

§ 504.8 Appeals from denial of requests for amendment to records.

(a) An individual whose request for amendment of a record pertaining to such individual is denied may request a review of such determination. Such request shall be addressed to the Chairman of the Commission, and shall specify the reasons for which the refusal to amend is challenged.

(b) If on appeal the refusal to amend the record is upheld, the Commission shall permit the individual to file a statement setting forth the reasons for disagreement with the determination. The statement must also be submitted within 30 days of receipt of the denial. The statement shall be included in the system of records in which the disputed record is maintained and shall be marked so as to indicate (1) that a statement of disagreement has been filed, and (2) where in the system of records the statement may be found.

§ 504.9 Fees.

Fees to be charged, if any, to any individual for making copies of such individual's record excluding the cost of

any search for and review of the record shall be as follows:

(a) Photocopy reproductions, each copy $0.15.

(b) Where the Commission undertakes to perform for a requester, or any other person, services which are clearly not required to be performed under the Privacy Act, either voluntarily or because such services are required by some other law, the question of charging fees for such services shall be determined by the official or designee authorized to release the information, under the Federal user charge statute, 31 U.S.C. 583a, any other applicable law, and the provisions of § 503.13 of Part 503 of the Commission's regulations.

§ 504.10 Exemptions.

No system of records maintained by the Foreign Claims Settlement Commission is exempt from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k). However, the Chairman of the Commission reserves the right to promulgate rules in accordance with the requirements of 5 U.S.C. 553(b) (1), (2) and (3), (c) and (e) to exempt any system of records maintained by the Commission in accordance with the provisions of 5 U.S.C. 552a(k).

§ 504.11 Reports.

(a) The Administrative Officer or designee shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any Commission system of records, as required by 5 U.S.C. 552a(o).

(b) If at any time a system of records maintained by the Commission is determined to be exempt from the application of 5 U.S.C. 552a in accordance with the provisions of 5 U.S.C. 552a (j) and (k), the number of records contained in such system shall be separately listed and reported to the Office of Management and Budget.

§ 504.12 Notices.

The Commission shall publish in the **Federal Register** at least annually a notice of the existence and character of the systems of records which it maintains. Such notice shall include:

(a) The name and location of each system;

(b) The categories of individuals on whom the records are maintained in each system;

(c) The categories of records maintained in each system;

(d) Each routine use of the records contained in each system including the categories of users and the purpose of each use;

(e) The policies and practices of the Commission regarding storage, retrievability, access controls, retention, and disposal of the records;

(f) The title and business address of the agency official who is responsible for each system of records;

(g) Commission procedures whereby an individual can be notified if a system of records contains a record pertaining to such individual;

(h) Commission procedures whereby an individual can be notified how to gain access to any record pertaining to such individual contained in a system of records, and how to contest its content, and

(i) The categories of sources of records in each system.

Subpart B—Government in the Sunshine Regulations

Authority: 5 U.S.C. 552b.

§ 504.20 Definitions.

For purposes of this part: "Agency" means any agency, as defined in 5 U.S.C. 552b(e), which includes the Foreign Claims Settlement Commission, headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

"Closed meeting" and "closed portion of a meeting" mean, respectively, a meeting or that part of a meeting designated as provided in § 504.27 as closed to the public by reason of one or more of the closure provisions listed in § 504.24.

"Commission" means the Foreign Claims Settlement Commission, which is a collegial body that functions as a unit composed of three individual members, appointed by the President with the advice and consent of the Senate.

"Meeting" means the deliberations of at least two (quorum) members of the Commission where such deliberations determine or result in joint conduct or disposition of official Commission business.

"Member" means any one of the three members of the Commission.

"Open meeting" means a meeting or portion of a meeting which is not a closed meeting or a closed portion of a meeting.

"Public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way, in an open meeting of the Commission within the limits of reasonable and comfortable accommodations made available for such purpose by the Commission.

§ 504.21 Notice of public observation.

(a) A member of the public is not required to give advance notice of an intention to exercise the right of public observation of an open meeting of the Commission. However, in order to permit the Commission to determine the amount of space and number of seats which must be made available to accommodate individuals who desire to exercise the right of public observation, such individuals are requested to give notice to the Commission at least two business days before the start of the open meeting of the intention to exercise such right.

(b) Notice of intention to exercise the right of public observation may be given in writing, in person, or by telephone to the official designated in § 504.29.

(c) Individuals who have not given advance notice of intention to exercise the right of public observation will not be permitted to attend and observe the open meeting of the Commission if the available space and seating are necessary to accommodate individuals who gave advance notice of such intention.

§ 504.22 Scope of application.

The provisions of this Part 504, §§ 504.20 through 504.29, apply to meetings of the Commission, and do not apply to conferences or other gatherings of employees of the Commission who meet or join with others, except at meetings of the Commission to deliberate on or conduct official agency business.

§ 504.23 Open meetings.

Every meeting of the Commission shall be open to public observation except as provided in § 504.24.

§ 504.24 Grounds for closing a meeting.

(a) Except in a case where the Commission determines otherwise, a meeting or portion of a meeting may be closed to public observation where the Commission determines that the meeting or portion of the meeting is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552) provided that

such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Commission, provided the Commission has not already disclosed to the public the content or nature of its proposed action, or is not required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal agency adjudication pursuant to the procedures in section 554 of Title 5, United States Code, or otherwise involve a determination on the record after opportunity for a hearing.

(b) If the Commission determines that the public interest would require that a meeting to be open, it may nevertheless so hold.

§ 504.25 Announcement of meetings.

(a) The Commission meets in its offices at 1111 20th Street, NW., Washington, DC, from time to time as announced by timely notice published in the **Federal Register.**

(b) At the earliest practicable time, which is estimated to be not later than eight days before the beginning of a meeting of the Commission, the Commission shall make available for public inspection in its offices, and, if requested, shall furnish by telephone or in writing, a notice of the subject matter of the meeting, except to the extent that such information is exempt from disclosure under the provisions of § 504.24.

§ 504.26 Procedures for closing of meetings.

(a) The closing of a meeting shall occur when:

(1) A majority of the membership of the Commission votes to take such action. A separate vote of the Commission members shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 504.24, or with respect to any information which is proposed withheld under § 504.24. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 504.24 (e), (f) or (g), the Commission upon request of any one of its Commission members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question and a full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The Commission shall announce the time, place and subject matter of the meeting at least 8 days before the meeting.

(d) For every closed meeting, before such meeting is closed, the Commission's Chairman shall publicly certify that, the meeting may be closed to the public, and shall state each relevant closure provision. A copy of such certification, together with a statement setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission.

§ 504.27 Reconsideration of opening or closing, or rescheduling a meeting.

The time or place of a Commission meeting may be changed following the public announcement only if the Commission publicly announces such changes at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement only if a majority of the Commission members determines by a recorded vote that Commission business so requires and that no earlier announcement of the changes was possible, and the Commission publicly announces such changes and the vote of each member upon such change at the earliest practicable time.

§ 504.28 Record of closed meetings, or closed portion of a meeting.

(a) The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting or closed portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public pursuant to § 504.24 (d), (h), or (j), the Commission shall maintain either such transcript, recording, or a detailed set of minutes.

(b) Any minutes so maintained shall fully and clearly described all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote. All documents considering in connection with any action shall be identified in the minutes.

(c) The Commission shall promptly make available to the public, in its offices, the transcript, electronic recording, or minutes, of the discussion of any itme on the agenda of a closed meeting, or closed portion of a meeting, except for such item or items of discussion which the Commission

determines to contain information which may be withheld under § 504.24. Copies of such transcript or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting or closed portion of a meeting for a period of two years after the date of such closed meeting or closed portion of a meeting.

(e) All actions required or permitted by this section to be undertaken by the Commission shall be by or under the authority of the Chairman of the Commission.

§ 504.29 Requests for information.

Requests to the Commission for information about the time, place, and subject matter of a meeting, whether it or any portions thereof are closed to the public, and any requests for copies of the transcript or minutes or of a transcript of an electronic recording of a closed meeting, or closed portion of a meeting, to the extent not exempt from disclosure by the provisions of § 504.24, shall be addressed to the Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579, telephone 202/653-6155.

SUBCHAPTER B—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER TITLE I OF THE WAR CLAIMS ACT OF 1948, AS AMENDED BY PUB. L. 91-289, APPROVED JUNE 24, 1970

PART 505—FILING OF CLAIMS AND PROCEDURES THEREFOR

Sec.

Authority: Sec. 2, Pub. L. 80-896, 62 Stat. 1240 as amended by Pub. L. 91-289, 84 Stat. 324 (50 U.S.C. App. 2001).

§ 505.1 Claim defined.

(a) A properly completed and executed application made on an official form provided by the Foreign Claims Settlement Commission for such purpose constitutes a claim and will be processed under the laws administered by the Commission.

(b) Any communication, letter, note, or memorandum from a claimant, or the claimant's duly authorized representative, or a person acting as next friend of a claimant who is not sui juris, setting forth sufficient facts to apprise the Commission of an interest to apply under the provisions of sections 5(i) and 6(f) of the Act, shall be deemed to be an informal claim. Where an informal claim is received and an official form is forwarded for completion and execution by the applicant, such official form shall be considered as evidence necessary to complete the initial claim, and unless such official form is received within thirty (30) days from the date it was transmitted for execution, if the claimant resides in the continental United States, or forty-five (45) days if outside the continental United States, the claim may be disallowed.

§ 505.2 Time within which claims may be filed.

(a) Claims of individuals entitled to benefits under section 5(i) of the War Claims Act of 1948, as added by Pub. L. 91-289, will be accepted by the Commission during the period beginning June 24, 1970 and ending (1) June 24, 1973, inclusive; (2) 3 years from the date the civilian American citizen by whom the claim is filed returned to the jurisdiction of the United States; or (3) 3 years from the date upon which the Commission, at the request of a potentially eligible survivor, makes a determination that the civilian American citizen has actually died or may be presumed to be dead, in the case of any civilian American citizen who has not returned to the jurisdiction of the United States, whichever of the preceding dates last occurs.

(b) Claims of individuals entitled to benefits under section 6(f) of the War Claims Act of 1948, as added by Pub. L. 91-289, will be accepted by the Commission during the period beginning June 24, 1970 and ending (1) June 24, 1973, inclusive; (2) 3 years from the date the prisoner of war by whom the claim is filed returned to the jurisdiction of the Armed Forces of the United States; or (3) 3 years from the date the Department of Defense makes a determination that the prisoner of war has actually died or is presumed to be dead, in the case of any prisoner of war who has not returned to the jurisdiction of the Armed Forces of the United States, whichever of the preceding dates last occurs.

§ 505.3 Official claim forms.

Official forms are provided for use in the preparation of claims for submission to the Commission for processing. Claim forms are available at the Washington offices of the Commission and through other offices as the Commission may designate. The official claim form for all claims under section 5(i) and 6(f) has been designated, FCSC Form 289, "Application for Compensation for Members of the Armed Forces of the United States Held as Prisoner of War in Vietnam; for Persons Assigned to Duty on board the 'U.S.S. Pueblo' Captured by Military Forces of North Korea; for Civilian American Citizens Captured or Who Went into Hiding to Avoid Capture or Internment in Southeast Asia During the Vietnam Conflict and, in Case of Death of any Such Person, for Their Survivors."

§ 505.4 Place of filing claims.

Claims must be mailed or delivered in person to the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

§ 505.5 Documents to accompany forms.

All claims filed pursuant to sections 5(a) and 6(f) of the Act must be accompanied by evidentiary documents, instruments, and records as outlined in the instruction sheet attached to the claim form.

§ 505.6 Receipt of claims.

(a) *Claims deemed received.* A claim shall be deemed to have been received by the Commission on the date postmarked, if mailed, or if delivery is made in person, on the date of delivery at the offices of the Commission in Washington, DC.

(b) *claims developed.* In the event that a claim has been so prepared as to preclude processing thereof, the Commission may request the claimant to furnish whatever supplemental evidence, including the completion and execution of an official claim form, as may be essential to the processing thereof. In case the evidence or official claim form requested is not returned within the time which may be designated by the Commission, the claim may be deemed to have been abandoned and may be disallowed.

PART 506—PROVISIONS OF GENERAL APPLICATION

Sec.

Authority: Sec. 2, Pub. L. 80-896, 62 Stat. 1240, as amended by Pub. L. 91-289, 84 Stat. 324 (50 U.S.C. App. 2001).

§ 506.1 Persons eligible to file claims.

Persons eligible to file claims with the Commission under the provisions of

section 5(i) and 6(f) of the War Claims Act of 1948, as amended, are:

(a) Civilian American citizens captured and held in Southeast Asia or their eligible survivors, under the provisions of section 5(i) of the Act; and

(b) Members of the Armed Forces of the United States held as prisoners of war during the Vietnam conflict or their eligible survivors, under section 6(f) of the Act.

§ 506.2 Persons under legal disability.

(a) Claims may be submitted on behalf of persons who, being otherwise eligible to make claims under the provisions of sections 5(i) and 6(f), are incompetent or otherwise under any legal disability, by the natural or legal guardian, committee, conservator, curator, or any other person, including the spouse of such claimant, whom the Commission determines is charged with the care of the claimant.

(b) Upon the death of any individual for whom an award has been made, the Commission may consider the initial application filed by or in behalf of the decedent as a formal claim for the purpose of reissuing the award to the next eligible survivor in the order of preference as set forth under sections 5(i) and 6(d)(4) of the Act.

§ 506.3 Definitions applicable under the Act.

"Child" means:

(1) A natural or adopted son or daughter of a deceased prisoner of war or a deceased civilian prisoner of war or a deceased American citizen including any posthumous son or daughter of such deceased person.

(2) Any son or daughter of such deceased person born out of wedlock will be deemed to be a child of such deceased for the purpose of this Act, if, (i) legitimated by a subsequent marriage of the parents, (ii) recognized as a child of the deceased by his or her admission, or (iii) so declared by an order or decree of any court of competent jurisdiction.

"Husband" means the surviving male spouse of a deceased prisoner of war or of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place entered into.

"Natural guardian" means father and mother who shall be deemed to be the natural guardians of the persons of their minor children. If either dies or is incapable of action, the natural guardianship of the person shall devolve upon the other. In the event of death or incapacity of both parents, then such blood relative, paternal or maternal, standing in loco parentis to the minor shall be deemed the natural guardian.

"Parent" means:

(1)(i) The natural or adoptive father or mother of a decreased prisoner of war, or any person standing in loco parentis to such decease person, for a period of not less than 1 year immediately preceding the date of such person's entry into active service and during at least 1 year of such person's minority. Not more than one mother and/or father as defined shall be recognized in any case. A person will not be recognized as standing in loco parentis if the natural parents or adoptive parents are living, unless there is affirmative evidence of abandonment and renunciation of parential duties and obligations by the natural or adoptive parent or parents prior to entry into active service by the deceased prisoner or war;

(ii) An award in the full amount allowable had the deceased prisoner of war survived may be made to only one parent when it is shown that the other parent has died or if there is affirmative evidence of abandonment and renunciation of parental duties and obligations by the other parent.

(2) The father of an illegitimate child will not be recognized as such for purposes of the Act unless evidence establishes that (i) he has legitimated the child by subsequent marriage with the mother; (ii) recognized the child as his by written admission prior to enlistment of the deceased in the armed forces or entry into an overseas duty status; or (iii) prior to death of the child he has been declared by decree of a court of competent jurisdiction to be the father.

"Widow" means the surviving female spouse of a deceased prisoner of war or a deceased civilian American citizen who was married to the deceased at the time of his death by marriage valid under the applicable law of the place where entered into.

PART 507—ELIGIBILITY REQUIREMENTS FOR COMPENSATION

Subpart A—Civilian American Citizen

Sec.

Subpart B—Prisoners of War

Authority: Sec. 2, Pub. L. 89–896, 62 Stat. 1240, as amended by Pub. L. 91–289, 84 Stat. 324 (50 U.S.C. App. 2001).

Subpart A—Civilian American Citizens

§ 507.1 "Civilian American citizen" defined.

"Civilian American Citizen" means any person who, being then a citizen of the United States, was captured in Southeast Asia during the Vietnam conflict by any force hostile to the United States, or who went into hiding in Southeast Asia in order to avoid capture or internment by any such hostile force.

§ 507.2 Other definitions.

"Calendar month" means the period of time between a designated day of any given month and the date peceding a similarly designated day of the following month.

"Citizen of the United States" means a person who under applicable law acquired citizenship of the United States by birth, by naturalization, or by derivation.

"Dependent husband" means the surviving male spouse of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place where entered into.

"Force hostile to the United States" means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

"Southeast Asia" means but is not necessarily restricted to, the areas of North and South Vietnam, Laos, and Cambodia.

"Went into hiding" means the action taken by a civilian American citizen when such person initiated a course of conduct consistent with an intention to

evade capture or detention by a hostile force in Southeast Asia.

§ 507.3 Rate of benefits payable.

Detention benefits awarded to a civilian American citizen will be paid at the rate of $150 for each calendar month of internment or during the period such civilian American citizen went into hiding to avoid capture and internment by a hostile force. Awards shall take account of fractional parts of a calendar month.

§ 507.4 Survivors entitled to award of detention benefits.

In case of death of a civilian American citizen who would have been entitled to detention benefits under the War Claims Act of 1948, as amended, such benefits shall be awarded, if claim is made, only ot the following persons:

(a) Widow or husband if there is no child or children of the deceased;

(b) Widow or dependent husband and child or children of the deceased, one-half to the widow or dependent husband and the other half to the child or children in equal shares;

(c) The child or children of the deceased in equal shares if there is no widow or dependent husband, if otherwise qualified.

§ 507.5 Persons not eligible to award of civilian detention benefits.

An individual is disqualified as a "civilian American citizen" under the Act, and thus is precluded from receiving an award of detention benefits, if such person:

(a) Voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any such hostile force; or

(b) While detained, was a regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States.

Subpart B—Prisoners of War

§ 507.10 Vietnam conflict.

"Vietnam conflict" refers to the period beginning February 28, 1961, and ending on a date to be determined by Presidential proclamation or concurrent resolution of the Congress.

§ 507.11 "Prisoner of war" defined.

"Prisoner of war" means any regularly appointed, enrolled, enlisted or inducted member of the Armed Forces of the United States who was held by any force hostile to the United States for any period of time during the Vietnam conflict.

§ 507.12 Membership in the Armed Forces of the United States; establishment of.

Regular appointment, enrollment, enlistment or induction in the Armed Forces of the United States shall be established by certification of the Department of Defense.

§ 507.13 "Armed Forces of the United States" defined.

"Armed Forces of the United States" means the United States Air Force, Army, Navy, Marine Corps and Coast Guard, and commissioned officers of the U.S. Public Health Service who were detailed for active duty with the Armed Forces of the United States.

§ 507.14 "Force hostile to the United States" defined.

"Force hostile to the United States" means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

§ 507.15 Geneva Convention of August 12, 1949.

The Geneva Convention of August 12, 1949, as identified in section 6(f) of the War Claims Act of 1948, as amended, is the "Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949" which is included under the "Geneva Convention of August 12, 1949 For the Protection of War Victims", entered into by the United States and other governments, including the Government in North Vietnam which acceded to it on June 28, 1957.

§ 507.16 Failure to meet the conditions and requirements prescribed under the Geneva Convention of August 12, 1949.

For the purpose of this part, obligations under the Geneva Convention of August 12, 1949, consist of the responsibility assumed by the contracting parties thereto with respect to prisoners of war within the meaning of the Convention, to comply with and to fully observe the provisions of the Convention, and particularly those articles relating to food rations of prisoners of war, humane treatment, protection, and labor of prisoners of war, and the failure to abide by the conditions and requirements established in such Convention by any hostile force with which the Armed Forces of the United States were engaged in armed conflict.

§ 507.17 Rate of and basis for award of compensation.

(a) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(2) of the War Claims Act of 1948, as amended, will be paid at the rate of $2 per day for each day such person was held as prisoner of war on which the hostile force, or its agents, failed to furnish the quantity and quality of food prescribed for prisoners of war under the Geneva Convention of August 12, 1949.

(b) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(3) of the Act, will be paid at the rate of $3 per day for each day such person was held as a prisoner of war on which the hostile force failed to meet the conditions and requirements under the provisions of the Geneva Convention of August 12, 1949 relating to labor of prisoners of war or for inhumane treatment by the hostile force by which such person was held.

(c) Compensation under paragraphs (a) and (b) of this section will be paid to the prisoner of war or qualified applicant on a lump-sum basis at a total rate of $5 per day for each day the prisoner of war was entitled to compensation.

§ 507.18 Entitlement of survivors to award in case of death of prisoner of war.

In case of death of a prisoner of war who would have been entitled to an award of compensation under section 6(f) (2) and (3) of the War Claims Act of 1948, as amended, such compensation shall be awarded, if claim is made, only ot the following person:

(a) Widow or husband if there is no child or children of the deceased;

(b) Widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares;

(c) child or children of the deceased (in equal shares) if there is no widow or husband; and

(d) Parents (in equal shares) if there is no widow, husband or child.

§ 507.19 Members of the Armed Forces of the United States precluded from receiving award of compensation.

Any member of the Armed Forces of the United States, who at any time, voluntarily, knowingly, and without duress gave aid to or collaborated with, or in any manner served any force hostile to the United States, is precluded from receiving an award of compensation based on such member's capture and internment.

PART 508—PAYMENT

Sec.
508.1 Payments under the War Claims Act of 1948, as amended by Pub. L. 91–289.
508.2 Payments to persons under legal disability.
508.3 Reissuance of awards.

Authority: Sec. 2, Pub. L. 80–896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001).

§ 508.1 Payments under the War Claims Act of 1948, as amended by Pub. L. 91–289.

(a) Upon a determination by the Commission as to the amount and validity of each claim filed pursuant to section 5(i) and 6(f) of the War Claims Act of 1948, as amended, any award made thereunder will be certified by the Commission to the Secretary of the Treasury for payment out of funds appropriated for this purpose, in favor of the civilian internee or prisoner of war found entitled thereto.

(b) Awards made to survivors of deceased civilian internees or prisoners of war will be certified to the Secretary of the Treasury for payment to the individual member or members of the class or classes of survivors entitled to receive compensation in the full amount of the share to which each survivor is entitled, and if applicable, under the procedure set forth in § 508.3, except that as to persons under legal disability, payment will be made as specified in § 508.2.

§ 508.2 Payments to persons under legal disability.

Any awards or any part of an award payable under sections 5(i) and 6(f) of the Act to any person under legal disability may, in the discretion of the Commission, be certified for payment for the use of the claimant, to the natural or legal guardian, committee, conservator or curator, or if there is no such natural or legal guardian, committee, conservator or curator, then, in the discretion of the Commission, to any person, including the spouse of such person, or the Chief Officer of the hospital in which the claimant may be a patient, whom the Commission may determine is charged with the care of the claimant. In the case of a minor, any part of the amount payable may, in the discretion of the Commission, be certified for payment to such minor.

§ 508.3 Reissuance of awards.

Upon the death of any claimant entitled to payment of an award, the Commission will cause the award to be cancelled and the amount of such award will be redistributed to the survivors of the same class or to members of the next class of eligible survivors, if appropriate, in the order of preference as set forth under the Act.

PART 509—HEARINGS

Sec.
509.1 Basis for hearing.
509.2 Request for hearing.
509.3 Notification to claimant.
509.4 Failure to file request for hearing.
509.5 Purpose of hearing.
509.6 Résumé of hearing, preparation of.
509.7 Action by Commission.
509.8 Application of other regulations.

Authority: Sec. 2, Pub. L. 80–896, 62 Stat. 1240, as amended by Pub. L. 91–289, 84 Stat. 324 (50 U.S.C. App. 2001).

§ 509.1 Basis for hearing.

Any claimant whose application is denied or is approved for less than the full allowable amount of such claim, shall be entitled to a hearing before the Commission or its representative with respect to such claim. Hearings may also be held on the Commission's own motion.

§ 509.2 Request for hearing.

Within 30 days after the Commission's notice of denial of a claim, or approval for a lesser amount than claimed, has been posted by the Commission, the claimant, if a hearing is desired, shall notify the Commission in writing, and shall set forth in such request the reasons in full for requesting the hearing, including any statement of law or facts upon which the claimant relies.

§ 509.3 Notification to claimant.

Upon receipt of such a request the Commission shall schedule a hearing and notify the claimant as to the date and place such hearing is to be held. No later than 10 days prior to the scheduled hearing date, the claimant shall submit all documents, briefs, or other additional evidence relative to an appeal from the award.

§ 509.4 Failure to file request for hearing.

The failure to file a request for a hearing within the period specified in § 509.2 will be deemed to constitute a waiver of right to such hearing and the decision of the Commission shall constitute a full and final disposition of the case.

§ 509.5 Purpose of hearing.

(a) Such hearings shall be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of an unjust or unfounded claim or portion thereof, and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence shall be ruled upon by the presiding officer.

(b) Such hearings may be stenographically recorded either at the request of the claimant or at the discretion of the Commission. A claimant making such a request shall notify the Commission at least 10 days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to the claimant.

(c) Such hearings shall be open to the public.

§ 509.6 Résumé of hearing, preparation of.

Upon such hearing, the hearing officer shall prepare a résumé of the hearing, specifying the issues on which the hearing was based, and including a list of documents and contents and other items relative to such issues which were introduced as evidence. A brief analysis of oral testimony shall also be prepared and included in such résumé of the hearing not stenographically reported.

§ 509.7 Action by the Commission.

After the conclusion of such hearing and a review of the resume, the Commission may affirm, modify, or reverse its former action with respect to such claim, including a denial or reduction in the amount of the award theretofore approved. All findings of the Commission concerning the persons to whom compensation is payable, and the amounts thereof, are conclusive and not reviewable by any court.

§ 509.8 Application of other regulations.

To the extent they are not inconsistent with the regulations set forth under provisons of this subchapter, the other regulations of the Commission shall also be applicable to the claims filed hereunder.

SUBCHAPTER C—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949, AS AMENDED

PART 531—FILING OF CLAIMS AND PROCEDURES THEREFOR

Sec.
531.1 Time for filing.
531.2 Form, content and filing of claims.
531.3 Exhibits and documents in support of claim.
531.4 Acknowledgement and numbering.
531.5 Procedure for determination of claims.
531.6 Hearings.

Sec.
531.7 Presettlement conference.

Authority: Sec. 3, Pub. L. 81–455, 64 Stat. 12, as amended (22 U.S.C. 1622).

§ 531.1 Time for filing.

Claims shall be filed as specified by the Commission by duly promulgated notice published in the **Federal Register**, or as specified in legislation passed by Congress, as applicable.

§ 531.2 Form, content and filing of claims.

(a) Unless otherwise specified by law, or by regulations published in the **Federal Register**, Cliams shall be filed on official forms provided by the Commission upon request in writing addressed to the Commission at its office at 1111 20th Street, NW., Washington, DC 20579; shall include all of the information called for in the appropriate form; and shall be completed and signed in accordance with the instructions accompanying the form.

(b) Notice to the Foreign Claim Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing a claims program or the effective date of a lump-sum claims setlement agreement, of an intention to file a claim against a foreign country, shall *not* be considered as a timely filing of a claim under the statute or agreement.

(c) Any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period.

§ 531.3 Exhibits and documents in support of claim.

(a) If available, all exhibits and documents shall be filed with and at the same time as the claim, and shall, wherever possible, be in the form of original documents, or copies or originals certified as such by their public or other official custodian.

(b) *Documents in a foreign language.* Each copy of a document, exhibit or paper filed, which is written or printed in a language other than English, shall be accompanied by an English translation thereof duly verified under oath by its translator to be a true and accurate translation thereof, together with the name and address of the translator.

(c) *Preparation of papers.* All claims, briefs, and memoranda filed shall be typewritten or printed and, if typewritten, shall be on legal size paper.

§ 531.4 Acknowledgement and numbering.

The Commission will acknowledge the receipt of a claim in writing and will notify the claimant of the claim number assigned to it, which number shall be used on all further correspondence and papers filed with regard to the claim.

§ 531.5 Procedure for determination of claims.

(a) The Commission may on its own motion order a hearing upon any claim, specifying the questions to which the hearing shall be limited.

(b) Without previous hearing, the Commission or a designated member of the staff may issue a Proposed Decision in determination of a claim.

(c) Such Proposed Decision shall be delivered to the claimant or the claimant's attorney of record in person or by mail. Delivery by mail shall be deemed completed 5 days after the mailing of such Proposed Decision addressed to the last known address of the claimant or the claimant's attorney of record. A copy of the Proposed Decision shall be available for public inspection at the offices of the Commission.

(d) It shall be the policy of the Commission to post on a bulletin board any information of general interest to claimants before the Commission.

(e) When the Proposed Decision denies a claim in whole or in part, the claimant may within 15 days of service thereof file objections to such denial, assigning the errors relied upon, with accompanying brief in support thereof, and may request a hearing on the claim, specifying whether for the taking of evidence or only for the hearing of oral argument upon the errors assigned.

(f) Copies of objections to or requests for hearings on Proposed Decisions shall be available for public inspection at the Commission's offices.

(g) Upon the expiration of 30 days after service or receipt of notice, if no objection under this section has in the meantime been filed, a staff Proposed Decision, upon approval by the Commission, shall become the Commission's final determination and decision on the claim. A Proposed Decision issued by the Commission may become final after 30 days without further order or decision by the Commission.

(h) If an objection has in the meantime been filed, but no hearing requested, the Commission may, after due consideration thereof, (1) issue a Final Decision affirming or modifying its Proposed Decision, (2) issue an Amended Proposed Decision, or (3) on its own motion order order hearing thereon, indicating whether for the taking of evidence on specified questions or only for the hearing of oral arguments.

(i) After the conclusion of a hearing, upon the expiration of any time allowed by the commission for further submissions, the Commission may proceed to issue a Final Decision in determination of the claim.

(j)(1) In case an individual claimant dies prior to the issuance of the Final Decision, such person's legal representative shall be substituted as party claimant. However, upon failure of a representative to qualify for substitution, the Commission may issue its decision in the name of the estate of the deceased and, in case of an award, certify the award in the same manner to the Secretary of the Treasury for payment, if the payment of such award is provided for by statute.

(2) Notice of the Commission's action under this paragraph shall be forwarded to the claimant's attorney of record, or if the claimant is not represented by an attorney, such notice shall be addressed to the estate of the claimant at the last known place of residence.

(3) The term "legal representative" as applied in this paragraph means, in general, the administrator or executor, heir(s), next of kin, or descendant(s).

(k) after the date of filing with the Commission no claim shall be amended to reflect the assignment thereof by the claimant to any other person or entity except as otherwise provided by statute.

(l) At any time after a final Decision has been issued on a claim, or a Proposed Decision has been entered as the Final Decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with the program under which such claim is filed, a petition to reopen on the ground of newly discovered evidence may be filed. No such petition shall be entertained unless it appears therein that the newly discovered evidence came to the knowledge of the party filing the petition subsequent to the date of issuance of the Final Decision or the date on which the Proposed Decision was entered as the Final Decision; that it was not for want of due diligence that such evidence did not come sooner to the claimant's knowledge;' and that the evidence is material, and not merely cumulative, and that reconsideration of the matter on the basis of such evidence would produce a different decision. Such petition shall include a statement of the facts which the petitioner expects to prove, the name and address of each witness, the identity of documents, and

the reasons for failure to make earlier submission of the evidence.

§ 531.6 Hearings.

(a) Hearings, whether upon the Commission's own motion or upon request of claimant, shall be held upon not less than fifteen days' notice of the time and place thereof.

(b) Such hearings shall be open to the public unless otherwise requested by claimant and ordered by the Commission.

(c) Such hearings shall be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practices, may be offered in evidence on the claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of any unjust or unfounded claim or portion thereof; and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence shall be ruled upon by the presiding officer.

(d) The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his or her claim.

(e) Hearings may be stenographically reported either at the request of the claimant or upon the discretion of the Commission. A claimant making such a request shall notify the Commission at least ten (10) days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to the claimant.

§ 531.7 Presettlement conference.

The Commission on its own motion or initiative, or upon the application of a claimant for good cause shown, may direct that a presettlement conference be held with respect to any issue involved in a claim.

Bohdan A. Futey,

Chairman.

[FR Doc. 87-10199 Filed 5-8-87; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 85-349; FCC 87-105]

Cable Television; Amendment of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This action preserves the essential elements of the two-part regulatory program adopted by *Report and Order* on August 7, 1986, to resolve the cable mandatory signal carriage matter. It retains the imput selector switch and consumer education requirements and interim must carry rules with a firm five-year sunset date. However, it modifies the input selector switch rules to reduce the burden imposed on cable operators and to provide both cable operators and subscribers with more discretion in the choice of switch options. The rules will be modified to allow cable operators to charge for purchase or lease of switches and to specify that subscribers may decline the installation of a switch. Also adopted are several refinements to the rules to eliminate unnecessary burdens, particularly to exempt cable systems located in areas where no off-the-air signals are available from the switch and consumer education requirements, and to tailor the rules more closely to the federal objectives stated in the *Report and Order*. The Commission reaffirmed its belief that this program provides a constitutionally acceptable balance between the need to protect the federal interest in maximizing consumers' program choices and cable operators' and programmers' First Amendment rights.

EFFECTIVE DATE: June 10, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in MM Docket No. 85-349, adopted March 26, 1987, and released May 1, 1987.

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

Summary of the Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order*, the Commission addresses thirty petitions for reconsideration of its *Report and Order* in MM Docket No. 85-349, 51 FR 44606, released November 28, 1987. The petitions, filed on behalf of broadcast and cable interests as well as other parties, requested modifications to both the basic approach and the specific provisions of the two-part regulatory program adopted in the cable signal carriage proceeding. This decision preserves the essential elements of the two-part regulatory program, that is, the input selector switch and consumer education requirements and the interim must carry rules with a five-year sunset remain. It also provides for modifications to the input selector switch requirements that will reduce the burden imposed on cable operators and will provide both cable operators and subscribers with more discretion in their choice of switch options.

2. A number of petitioners opposed the two-part program. Several cable parties claimed that the interim must carry rules should be eliminated on the grounds that they unconstitutionally intrude on the First Amendment rights of cable operators, programmers and subscribers. Many petitioners requested clarification and modification of the specific provisions of the new rules including technical standards for input selector switches, the consumer education program requirements and the interim must carry rules.

3. In the *Memorandum Opinion and Order*, the Commission finds there is no credible evidence in the petitions demonstrating that the input selector switch is not a feasible means for alternating between access to cable and off-the-air program services. It also rejects petitioners' arguments that the interim must carry rules are unconstitutional or that continuing must carry rules are necessary. However, the Commission recognizes that the rules, as adopted in the *Report and Order*, would impose substantial costs on cable operators and in some cases would require switches to be provided in areas with no available off-the-air signals. It also expresses concern that the input selector switch rules, as adopted, might reduce the flexibility of both cable operators and consumers with respect to the choice of switches that would be most suitable for individual needs or preferences.

4. In view of these considerations, the Commission is adopting modifications to certain features of its regulatory program. Under the revised rules, cable systems will be required only to affirmatively offer switches to new and existing subscribers and will be permitted to charge for them. Cable systems also will be permitted to charge for installation of switches for existing

subscribers. However, they will not be permitted to impose an additional charge strictly for installation of switches for new subscribers. The rules also will include language to clarify that subscribers may decline the switch offer and are not obligated otherwise to install or maintain off-the-air reception capability and may install and use switches and associated hardware obtained from sources other than their cable system if they so desire. In addition, the Commission finds that there is no need to require input selector switches or consumer education in areas where there are no broadcast signals available off-the-air. It therefore exempts cable systems located in such areas from the switch and consumer education requirements. The requirement for offering switches to new subscribers is delayed for six months in the same manner as the requirement for offering switches to existing subscribers. However, cable operators will be required to inform new subscribers of the need to maintain off-the-air reception capability and to provide them other information required by the consumer education requirements immediately upon the effective date of the rules, as originally planned.

5. In the *Memorandum Opinion and Order*, the Commission adopts a number of revisions and refinements to the specific provisions of the consumer education and interim must carry rules.

6. The Commission directed the staff to prepare a separate Notice of Proposed Rule Making to consider requiring input selector switches used to alternate between and cable and broadcast service comply with the § 15.606(a) technical standards for TV interface device transfer switches. The Commission recognized the concerns expressed by some parties with respect to the need to ensure that input selector switches provide adequate isolation of the two signal paths to prevent radiation of cable signals through the antenna. It concluded that in view of the importance of this issue, it is desirable to provide interested parties with an additional opportunity for comment.

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that the modifications to the specific requirements of this program will reduce the economic burden it imposes on the regulated parties, particularly the cable industry. Cable systems now are free to set a price for purchase or lease of input selector switches, including associated hardware and installation for existing subscribers. In addition, cable systems located in areas where there are no available off-the-air signals will be completely exempt from the rules. The consumer education requirements now are stated as a series of general rather than specific requirements, and, thus, will provide cable operators with additional flexibility to tailor this information to suit their subscribers' particular needs.

8. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget as prescribed by the Act.

9. The Secretary shall cause a copy of this *Memorandum Opinion and Order* to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

10. Accordingly, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act and § 1.106 of the Commission's rules, *It Is Ordered* That the petitions for reconsideration of the *Report and Order* filed by parties named herein *are granted* to the extent indicated above, and *are denied* in all other respects. In addition, *It Is Ordered* That Part 76 of the Commission's rules *Is Amended* as set forth in Appendix B, effective June 10, 1987. *It Is Further Ordered* That the "Motion to Vacate Report and Order and for Termination of Proceeding" filed by Century Communications Corp., *et al. Is Denied.*

List of Subjects in 47 CFR Part 76

Cable television.

Rule Changes

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 521.

2. Section 76.5 is amended by revising paragraphs (d)(1), (d)(1)(ii), and (d)(2) and by adding a new paragraph (d)(3) to read as follows:

§ 76.5 Definitions.

* * * * *

(d) *Qualified station.* (1) Any television broadcast station, as defined in § 76.5(b), except where such station would result in payment by the cable system of distant signal copyright fees, that with respect to a particular cable system:

* * * * *

(ii) If a commercial station, receives an average share of total viewing hours of at least two percent and a net weekly circulation of at least five percent, as defined in § 76.5(k), in noncable households in the county served by the cable system or has been operational less than one full year. For purposes of this section, a station is considered operational as of the date it initially commences operation under program test authority. Changes in station operations, for example, upgrade of facilities, transfer or assignment of license, or recommencement after operations have ceased, are not considered initial commencement of operations under this paragraph. The viewing standards of this paragraph shall not apply for one full year from June 10, 1987, to otherwise qualified stations that commenced operation after July 19, 1985, but before June 10, 1987 (the effective date of these rules). Once a commerical station has demonstrated that, on the basis of a full one-year survey season, it meets the viewing standard, it will be considered to have satisfied this standard for the remainder of the period until June 10, 1992; Provided, however, that at any time after one year from the date a commercial station demonstrates that it meets the viewing standard, a cable system may nullify the station's mandatory signal carriage eligibility if it demonstrates, using the methodology specified in § 76.55 of this part, that the station no longer meets the viewing standard.

(2) Any noncommerical educational television station's translator with 5 watts or higher power serving the cable community.

(3) A full service station or translator qualifies as a noncommerial educational station for purposes of these rules if it is licensed to a channel reserved for noncommerical educational use pursuant to § 73.606 of this chapter. The Commission also will consider whether stations operating on nonreserved channels qualify as noncommerical educational stations on a case-by-case basis.

* * * * *

3. Section 76.55 is amended by revising the introductory paragraph to read as follows:

§ 76.55 Qualified television station; method to be followed for showings.

A commercial television station shall demonstrate that, for the previous survey season, it meets the viewing standard specified in § 76.5(d)(1)(ii) on the basis of an independent professional

survey of noncable homes conducted according to the following provisions:

* * * * *

4. Section 76.56 is amended by removing paragraph (c)(2), redesignating paragraph (c)(3) as (c)(2) and retaining the **Note** following redesignated (c)(2), adding new paragraph (c)(3), and by revising paragraph (d), to read as follows:

§ 76.56 Mandatory carriage of television stations.

* * * * *

(c) * * *

(3) Is duplicated by another station that is carried; including where both a commercial parent station and its satellite station(s) qualify, and, in the case of noncommercial stations, where a parent station and its satellite and/or translator station(s) qualify.

(d) A cable system shall not accept direct (monetary) payment or other indirect (nonmonetary) consideration in exchange for carriage of the signal of any qualified television station carried in fulfillment of mandatory signal carriage obligations, *except that* any such station may bear any costs associated with delivering a good quality signal, as defined in paragraph (c)(2) of this section, to the cable system.

* * * * *

5. Section 76.60 is amended by revising paragraph (a) to read as follows:

§ 76.60 Carriage of other television signals.

(a) In addition to the qualified television station(s) carried pursuant to § 76.56, a cable system may carry the signals of any other television stations, and also may carry low power television stations, television translator stations, foreign television stations, satellite distributed program services, direct broadcast satellite stations and programming from any other sources.

* * * * *

6. Section 76.62 is amended by revising paragraph (a)(2), redesignating paragraph (b) as paragraph (d) and adding new paragraphs (b) and (c), to read as follows:

§76.62 Manner of carriage.

(a) * * *

(2) The signal shall be carried without material degradation.

(b) Where a broadcast television station carried in fulfillment of the mandatory signal carriage obligations is carried on a tier of service, all signals carried in fulfillment of those obligations must be carried on that tier; *Provided, however,* that a signal carried in fulfillment of mandatory signal carriage obligations may be placed on a tier of service, reception of which requires separate terminal device, if such devices are provided free of charge to all subscribers.

(c) All broadcast television stations carried in fullfillment of mandatory carriage obligations must be included on the lowest-priced tier of service separately available to each cable subscriber. The tier of service on which such stations are carried also must be accessible on additional receiver connections which the subscriber may purchase.

* * * * *

7. Section 76.66 is revised in its entirety to read as follows:

§ 76.66 Input selector switches and consumer education.

(a) A cable system operator shall offer to supply to each new subscriber and each existing subscriber an input selector switch for each separate television receiver for which cable service is provided by the cable operator. The operator shall comply with the following in offering the switch and installing cable service:

(1) Offer to supply and install a switch for all new and existing subscribers within six months of June 10, 1987, and thereafter on an annual basis until June 10, 1992, unless the subscriber already has an input selector switching device or his/her television receiver has such a device built-in;

(2) A cable operator may charge for the purchase or lease of switches and associated hardware and may separately charge for installation of switches for existing subscribers. However, a cable operator may not charge new subscribers a separate fee for switch installation.

(3) A cable system operator is not required to provide a switch to any subscriber who declines the required offer, but is not thereby relieved from making the offer to any such subscriber thereafter on an annual basis;

(4) The switch offer shall be made using test chosen by the cable operator that includes the following points:

(i) An offer to supply an input selector switch for each separate television receiver to which cable service is provided;

(ii) The switch connects both to the cable service and an antenna, and enables selection between cable service and off-the-air broadcast television signals;

(iii) If the subscriber already has switching capability, either in a separate device or as a built-in feature of his/her television receiver, an additional switch may not be needed;

(iv) If the subscriber desires switching capability, he/she may have the cable system install a switch or may obtain a switch from it with written self-installation instructions;

(v) Switching capability may be obtained from other from other suppliers; and,

(vi) For the subscriber's convenience, attach an offer response form to be returned to the cable system's business office.

(5) Comply with the following requirements with respect to antennas:

(i) If an antenna is present, the operator shall not recommend that the antenna be removed;

(ii) If an antenna is not present, the operator shall inform the subscriber that the switch will be operational only if it is connected to an antenna;

(iii) Where the operator installs a switch and an antenna is present, it shall connect the switch to that existing antenna.

(b) Individual cable subscribers are not required to purchase or lease input selector switches from their cable system. Subscribers may obtain such switches from suppliers other than their cable systems. Although cable subscribers are encouraged to established and maintain independent access to off-the-air broadcast signals, they are not required to do so.

(c) The cable system operator shall provide the following information to each subscriber at the time of installation of cable service and to existing subscribers, in writing, within six months after June 10, 1987, and annually thereafter to all subscribers, using whatever language the operator deems appropriate to convey the following:

(1) Until June 10, 1992, the cable system may not be required to carry all broadcast signals available off-the-air in the community; and that,

(2) After June 10, 1992, the cable system will no longer be required to carry any broadcast signals; and thus,

(3) It may be necessary to use an antenna, in conjunction with an input selector switch, to access broadcast signals available off-the-air and not carried by the cable system;

(4) A description of the function of an input selector switch and state that its purpose is to aid the viewer in preserving independent access to off-the-air television service;

(5) The input selector switches may be obtained from suppliers other than the cable system and that there may be a range of switch options available, such as simple manual cable/broadcast switches, multiple input source

switches, electronic switches, remote control switches, and receivers with built-in switches;

(6) Identify for their subscribers, by call sign and channel number, any full service broadcast signals not carried on the cable system whose predicted Grade B contour covers any portion of the cable community or that are "significantly viewed" in the cable community, as defined in § 76.5(k) of the rules (the list of stations must be current to within one month of the distribution of the information required pursuant to this paragraph);

(7) Indicate that questions related to input selector switches should be directed to a specified individual at the cable system and provide a telephone number at which that person can be reached.

8. Section 76.67 is amended by revising paragraph (a) to read as follows:

§ 76.67 Sports broadcasts.

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in §§ 76.5(ii)(1) through 76.5(ii)(3) of this part. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or local team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

* * * * *

9. New § 76.70 is added to Subpart D to read as follows:

§ 76.70 Exemption from input selector switch and mandatory signal carriage rules.

(a) Cable systems serving communities where no portion of the community is covered by the predicted Grade B contour of at least one full service broadcast television station or noncommercial educational television translator station operating with 5 or more watts output power and where the signals of no such broadcast stations are "significantly viewed" in the county where the cable community is located shall be exempt from the provisions of §§ 76.56, 76.58, 76.60, 76.62, and 76.66 of this chapter. Cable systems may be eligible for this exemption where they demonstrate with engineering studies prepared in accordance with § 73.686 of this Chapter and other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

(b) Where, prior to June 10, 1992, a new full service broadcast television station, or a new noncommercial educational television translator station with 5 or more watts, or an existing such station of either type with newly upgraded facilities provides predicted Grade B service to a community served by a cable system previously exempt under paragraph (a) of this section, or the signal of any such broadcast station is newly determined to be "significantly viewed" in the county where such a cable system is located, the cable system at that time is required to comply fully with the provisions of § 76.66 of this chapter. Cable systems may retain their exemption under paragraph (a) of this section where they demonstrate with engineering studies prepared in accordance with § 73.686 of this Chapter and other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

(c) Where the changed circumstances described in paragraph (b) of this section occur after June 10, 1992, the cable system at that time will be required to comply only with the provisions of § 76.66(d) remaining in effect.

10. Section 76.617 is revised to read as follows:

§ 76.617 Responsibility for interference.

(a) Interference generated by a radio or television receiver shall be the responsibility of the receiver operator in accordance with the provisions of Part 15, Subpart A of this chapter: Provided, however, That the operator of a cable television system to which the receiver is connected shall be responsible for the suppression of receiver-generated interference that is distributed by the system when the interfering signals are introduced into the system at the receiver.

(b) Interference resulting from use of an input selector switch shall be the responsibility of the switch operator in accordance with the transfer switch provisions of Part 15 of this chapter: Provided, however, That the operator of a cable television system to which the switch is connected shall be responsible for suppression of emissions of RF energy resulting from use of input selector switches that are in excess of the signal leakage and radiation limits of Part 76 of this chapter.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-10737 Filed 5-8-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 61092-7089]

Tanner Crab off Alaska

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule implementing a Secretarial Amendment to repeal the North Pacific Fishery Management Council's (Council) Fishery Management Plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP) and its implementing regulations. The Council is preparing a new FMP to replace this plan. This action is necessary because the Tanner crab FMP and its implementing regulations failed to provide for timely coordination with the State of Alaska's management actions and may have resulted in violation of several national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

EFFECTIVE DATE: April 29, 1987.

ADDRESS: Copies of the Secretarial Amendment are available from Robert W. McVey, Regional Director, NMFS, P.O. Box 21668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, Fishery Management Biologist, 907-586-7229.

SUPPLEMENTARY INFORMATION:

Background

The FMP was adopted by the Council and approved by the Assistant Administrator for Fisheries on behalf of the Secretary and published on May 16, 1978 (43 FR 21170). The FMP has been amended nine times, most recently on September 12, 1984 (49 FR 35779).

The objective of the FMP is to establish management measures necessary to conserve and manage Tanner crab stocks as a unit throughout their range in compliance with the national standards of the Magnuson Act and other applicable Federal law (FMP section 8.3.1). In order to achieve this

objective and effectively coordinate management with the State of Alaska, the FMP adopted a management system similar to that employed by the State (FMP section 3.3.3.2).

The management measures adopted by the FMP are characteristic of plans developed shortly after the Magnuson Act was enacted. Optimum yield (OY) is specified rigidly as a fixed range of the amounts of Tanner crab that may be taken in specified areas each year. Maximum sustainable yield (MSY), and season opening and closing dates, are similarly specified for each area. Therefore, a relatively long time is required to alter the various fishing areas and the OYs assigned to them to reflect the changing condition of the Tanner crab stocks because such changes must be made by plan amendment. The FMP does attempt to provide some flexibility by authorizing the NMFS Regional Director to adjust season dates and fishing areas by field order in the course of a season (FMP section 8.3.1.2.). Under the FMP and its implementing regulations at 50 CFR Part 671, the Regional Director may issue such a field order when he determines in the course of the fishing year that the condition of the Tanner crab stocks within a given management area is substantially different from the condition anticipated at the beginning of the fishing year, and that such differences support the need for inseason conservation measures to protect those stocks.

Because the FMP, to a great extent, adopts the present State management regime, effective management of the Tanner crab fishery depends on close and timely cooperation between NMFS and the State of Alaska. However, problems with the cooperative management system have become apparent. Because fishing areas and the OYs and season dates assigned to them are rigidly fixed in the FMP, NMFS may not, during the course of a season, impose the State's annual harvest guidelines and closures in the 3–200 mile exclusive economic zone (EEZ) unless implemented through plan amendment, promulgation of an emergency interim rule, or issuance of a field order.

Generally, only a field order can be carried out in the short time available to coordinate State and Federal management. Practice has shown, however, that in many instances the present field order authority is too narrowly prescribed to allow NMFS to coordinate Federal actions with State inseason management decisions. For example, State managers make estimates of stock abundance before the beginning of the fishing year which are published as annual harvest guidelines and often subsequently verified by information provided in the course of the fishery. Under these circumstances, a field order based on a State closure decision is not authorized by the FMP because the stock's condition is not different than the condition anticipated at the beginning of the year. Thus, the fishery must be allowed to continue in the EEZ until either an FMP amendment or emergency interim rule is implemented, or until the resulting continued fishing of the stock causes its condition to differ substantially from that anticipated at the beginning of the fishing year.

Other situations arise in the fishery when State managers determine that a season date in an area should be advanced in response to social or economic considerations. NMFS may not advance a season opening or closure in this case by field order since the field order authority permits inseason adjustments only to protect Tanner crab stocks. For the same reason NMFS may not allow extension of a season if a Tanner crab stock should prove more abundant than was anticipated before the beginning of the fishing year.

In certain situations the failure to provide for timely coordination with the State's management actions may result in violations of national standard 1 of Magnuson Act section 301(a) by failing to prevent overfishing. The FMP may also violate national standard 2 in that conservation and management measures may not be based upon the best scientific information available. Compliance with national standards 5, 6, and 7 is also called into question as the FMP fails, where practicable, to promote efficiency in the utilization of fishery resources; fails to account for variations and contingencies in fisheries; and fails, where practicable, to minimize costs and avoid unnecessary duplication. The abundance of Tanner crab off the coast of Alaska varies greatly from year to year and the *C. bairdi* Tanner crab stock currently is in a state of severe decline.

As a result of these large fluctuations in stock abundance, the rigid specification of OYs and MSYs in terms of specific annual quantities of Tanner crab that can be changed only by FMP amendment may violate the requirement of Magnuson Act section 303(a)(3) that a plan specify MSY and OY. Finally, the problems just described call into question conformance of the FMP's regulations with Executive Order 12291.

On November 1, 1986, NOAA promulgated an emergency interim rule at the request of the Council, to repeal the regulations implementing the Tanner crab FMP for a period of 90 days (November 1, 1986, through January 29, 1987; 51 FR 40027).

At its December 1986 meeting, the Council voted to extend the emergency interim rule for a second 90-day period (January 30 through April 29, 1987). When the second 90-day period expires, the current regulations will come back into effect unless permanently amended or repealed. At the December meeting, the Council also decided to begin preparation of a new FMP. However, the Council also determined that the 180 days' duration of the two emergency interim rules was insufficient to complete a study of management options, prepare a new FMP, and complete the Secretarial review process. Thus, the Council requested the Secretary to prepare and implement a Secretarial Amendment to repeal the FMP and its implementing regulations until such time as the Council prepares and the Secretary approves and implements a new FMP.

The Secretarial Amendment, which this rule implements, is intended to ensure that the Council has adequate time to study management alternatives and to develop a new FMP. In the interim, management authority will rest with the State of Alaska.

For the reasons stated above, this Secretarial Amendment repeals the Tanner crab FMP and its implementing regulations.

Public Comments Received

Comments were received from the U.S. Coast Guard, and from members of the fishing industry. Each comment has been summarized and is responded to as follows:

Comment 1: The Coast Guard believes that the Tanner crab regulations were not workable or enforceable and encourages a complete rewrite of the Tanner crab FMP.

Response: NOAA concurs with the comment.

Comment 2: There is a need for the repeal of the Federal Tanner crab FMP. The FMP has not provided the necessary flexibility for effective management. The respondent recommends that the State of Alaska manage the resource.

Response: NOAA concurs with the respondent that the Federal Tanner crab FMP needs to be repealed. However, NOAA has recommended that the North Pacific Fishery Management Council develop a new Federal crab FMP, which is now being developed.

Comment 3: The proposed rulemaking and supporting analyses failed to

discuss one alternative to the proposed action, namely a Secretarial Amendment to the existing FMP that corrects the perceived difficulties.

Response: Amending the current Tanner crab FMP was considered as an alternative in the environmental assessment prepared for the emergency rule repealing the regulations implementing the Tanner Crab FMP and again in the environmental assessment prepared for this Secretarial amendment. However, this alternative was found to be inferior to the proposed action, which is to repeal the current FMP and develop a new combined king and Tanner crab FMP, because neither a Council-developed amendment nor a Secretarial Amendment of the required scope could be undertaken with the limited administrative resources and the limited time available before the beginning of the 1986–87 fishing year in November 1986. Because management could not continue for another year under the current defective FMP, the only logical alternative is the proposed action. Further, amendment of the Tanner crab FMP would have expended resources which can be better used in developing a new FMP which properly manages both King and Tanner crab.

Comment 4: Repeal of the FMP constitutes abandonment of the Federal Government's responsibility. State management is not an adequate or proper substitute for Federal management. Transferring jurisdiction to the State would violate National Standard 4.

Response: This Secretarial Amendment does not totally abandon Tanner crab management to the State, but crab management simply reverts to the State of Alaska while the new FMP is being developed. The Tanner crab FMP, as written, cannot continue in force because it would violate the Magnuson Act, so management would revert to the State, in any case. The reversion to State management would occur during development of either an amendment to the Tanner crab FMP or a new king and Tanner crab FMP. There is no difference in the result.

Comment 5: Potential discrimination against non-Alaskans cannot be effectively cured on a real-time basis.

Response: If nonresidents feel that they are being discriminated against by any preseason or inseason action of the State, they may seek a temporary restraining order from a court and petition NOAA to implement an emergency rule under Magnuson Act section 305(e).

Comment 6: The draft crab plan now under consideration would cover only the Bering Sea/Aleutian Islands crab fishery and leave most management decisions to the State of Alaska.

Response: This is presently not a subject for comment. There will be ample opportunity for comments on the new FMP being developed by the Council during the formal review process.

Classification

The Administrator of NOAA determined that this Secretarial Amendment to repeal the Tanner crab FMP and implementing regulations is necessary for the conservation and management of the Tanner crab stocks off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator prepared an environmental assessment (EA) for this Secretarial Amendment and concluded that there will be no significant impact on the human environment as a result of this action. A copy of the EA is available (see ADDRESSES).

The Administrator of NOAA has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291 on the basis of an analysis by the Assistant Administrator for Fisheries conducted for this action. A copy of this analysis is available (see **ADDRESSES**).

The General Counsel for the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because State of Alaska Tanner crab management regulations impose essentially the same requirements as the Federal Tanner crab regulations. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator has determined that this action will be consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. No adverse reaction was received from those State agencies within the time allowed.

The Assistant Administrator also finds, to avoid disruption within the fishery and possible violation of national standards of the Magnuson Act, that it is impractical and contrary to public interest to delay for 30 days the effective date of the final rule as required under section 553 (b) and (d) of the Administrative Procedure Act.

This rule would temporarily repeal collection of information requirements previously approved under Office of Management and Budget (OMB) Control Numbers 0648–0016, 0648–0097 and 0648–0114. Because NOAA expects to reinstate the collection of information requirements under a new FMP, no request to withdraw the OMB approval of the information requirements will be submitted to OMB at this time.

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

PART 671—[REMOVED AND RESERVED]

For the reasons set forth in the preamble, 50 CFR Part 671 is removed and reserved.

Dated: May 6, 1987.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management National Marine Fisheries Service.

[FR Doc. 87–10642 Filed 5–6–87; 2:42 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 90
Monday, May 11, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amt. No. 290]

Food Stamp Program; Alien Verification

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposed to broaden current food stamp regulations which preclude State agencies from contacting the Immigration and Naturalization Service (INS) to obtain information about an alien's status without written consent of the alien. The proposal is being made to give States more flexibility to verify alien status through use of the INS Systematic Alien Vertification for Entitlements (SAVE) system or any other system which protects the individual's privacy to the maximum degree possible. This rule does not implement the provision pertaining to the SAVE system contained in the recently enacted Immigration Reform and Control Act of 1986 (Pub. L. 99–603). Regulations to implement the changes contained in the Immigration Reform and Control Act (IRCA) will be issued at a later date.

DATE: Comments on this proposed rulemaking must be received on or before July 10, 1987 to be assured of consideration.

ADDRESS: Comments should be submitted to Judith Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 706, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Ms. Seymour at the above address or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Secretary's Memorandum 1512–1

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1. The rule will not result in an annual economic impact of more than $100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the rule has been classified as "nonmajor."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related Notice to 7 CFR 3015 Subparst V (48 FR 29115), this program is exclcuded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this action does not have a significant economic impact on a substantial number of small entities. This action would affect certain Food Stamp Program applicants and the State and local agencies which administer the Program.

Paperwork Reduction Act

This rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Section 6(f) of the Food Stamp Act (7 U.S.C. 2015(f)) effectively states that those individuals who are determined to be illegal aliens are not eligible to participate in the Food Stamp Program. Since, under the Food Stamp Act, a person's exact alien classification is critical to that person's Food Stamp Program eligibility, the program eligibility worker is required to ask the alien to present the appropriate INS documentation as verification of such classification. Under current food stamp regulations at 7 CFR 273.2(f)(1)(ii), when an alien produces an INS document that does not clearly indicate alien status, the State agency advises the alien that he or she may contact INS to obtain the necessary verification or, if the alien wishes, that the State agency will, with the alien's written consent, contact the INS on the alien's behalf.

Reports from some States with large alien populations, indicate that the problem of verification of INS alien status card (I–94) is critical in some areas. Many cards are either out of date, have been altered or are counterfeit. However, eligibility workers do not possess the expertise to question the accuracy or authenticity of the documents. It has become apparent that further steps should be taken to help ensure that benefits are not erroneously issued to aliens with inaccurate or fraudulent documentation. In order to accomplish this objective, States will be given the authority to access verification systems such as the SAVE system.

The Immigration and Naturalization Service developed the SAVE system to prevent aliens who are in the United States unlawfully from obtaining various program benefits, such as food stamps, to which they are not entitled. Several State agencies have expressed interest in being able to use such a system to verify applicant aliens' documents during the Food Stamp Program application process. The current regulations' limitation on contacting INS only when the verification documents provided by the alien are questionable, and only with the alien's written consent, makes the use of a verification system very difficult. Some States are already actively engaged in alien status verification initiatives with INS for the Unemployment Compensation, AFDC and Medicaid Programs. In examining

the policy of the Department of Health and Human Services (HHS) in preparation for the planned AFDC/Food Stamp Program conformity rule, it was apparent that HHS is not restricted to contacting INS only with the alien's written consent. Consistency with HHS policy, as well as integration with anticipated regulations which will implement IRCA (which mandates the use of the INS SAVE system for verification of alien status) provide additional impetus for the proposed changes in this rule.

The proposed rule would change current regulations to allow State agencies to access SAVE or a similar system. Specifically, these proposed rules would: continue to mandate that an alien Food Stamp Program applicant verify his or her alien status via an INS document; remove the requirement that State agencies find questionable the INS document and obtain prior written consent from applicant-aliens before contacting INS for verification of the applicant-alien's documents; offer State agencies the option of using the SAVE system, or a similar system established with INS, to validate the INS document either for all aliens or for only those aliens whose status is questionable; and retain the State agency option of allowing aliens of questionable status to themselves obtain validation of their questionable document from INS. As in current regulations, failure to provide acceptable verification at the time of application would result in no benefits being issued to the alien until such verification is obtained. However, all of his/her resources and a prorated amount of his/her income would continue to be considered available to the remainder of the household as specified in 7 CFR 273.4(c) of the current regulations. Certification workers would still be precluded from reporting aliens to INS unless the certification worker has determined that the household member is an illegal alien. Further, INS would not, under any circumstances, review food stamp case records. State agencies may only access the SAVE system, or any other system, as a validation tool for assessing Food Stamp Program eligibility.

Section 121(b)(5) of IRCA amended section 16 of the Food Stamp Act (7 U.S.C. 2025) by providing that the Secretary, effective October 1987, has the authority to pay 100 percent of the costs incurred by State agencies in implementing and operating the SAVE system. The Department wants to make it clear that this rule does not implement the SAVE system provision of IRCA. The IRCA SAVE system will be implemented in a rule to be promulgated in the future. The costs incurred by State agencies in implementing the provisions in this proposed action will be paid, as are all other State agency administrative costs, on an equally shared, 50–50 Federal/State basis.

The proposed changes are consistent with the Deficit Reduction Act of 1984 (DEFRA) final rules on collateral contacts published in the **Federal Register** on February 28, 1986 (51 FR 7178). The DEFRA rules removed the household consent requirement from the general verification regulations for third-party contacts made for verification purposes based upon an interpretation of section 11(e)(8) of the Food Stamp Act as amended, (7 U.S.C. 2020(e)(8)). Section 11(e)(8) of the Food Stamp Act prohibits disclosure of applicant information to all but a limited few. INS personnel are not among the limited categories of persons to whom disclosure is permitted. Section 11(e)(2) of the Food Stamp Act requires that applicants for food stamps be informed of verification procedures upon application for program benefits (7 U.S.C. 2020(e)(2)). FNS believes that the notice required by section 11(e)(2) of the Act provides for adequate notification to applicant aliens of the possibility of verification of alien status with INS. Moreover, the privacy protections provided in section 11(e)(8) of the Act are not violated by a request for verification of information provided by applicant aliens as long as no information supplied by the applicant alien is provided to INS during the verification process. The Department, however, does expect that, when a State agency opts to use the SAVE system to verify aliens' documentation, the eligibility worker will explain this process to the alien applicant.

Implementation

Since the provisions of this rule are optional, it is proposed that they may be implemented by State agencies on the effective date of this rule, which is the first day of the month following the 30th day after publication of the final rule.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamp, Fraud, Grant programs-Social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

Accordingly, 7 CFR Part 273 is proposed to be amended as follows:

1. The authority citation for Part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

2. In § 273.2: A. Paragraph (f)(1)(ii)(C) is amended by removing the sixth and seventh sentences and by adding five new sentences in their place.

B. In paragraph (f)(1)(ii)(D), the third sentence is removed.

The addition reads as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(ii) *Alien status.* * * *

(C) * * * The alien shall also be advised that classification under sections 207, 208, 212(d)(5), or 243(h) of the Immigration and Nationality Act shall result in eligible status and that the alien may be eligible if acceptable verification is obtained. The State agency is required to verify questionable documentation of status. The State agency may allow aliens of questionable status to themselves contact INS, or the State agency may itself verify the questionable document. The State agency may also verify all INS documents presented by aliens, including, but not limited to, those listed in sub-paragraph (f)(1)(ii)(B) above, using the Systematic Alien Verification for Entitlements (SAVE) system or any other system acceptable to INS. If the alien does not wish to contact INS, or does not want the State agency to exercise its option to contact INS, the household shall be given the option of withdrawing its application or participating without that member.

* * * * *

Dated: May 5, 1987.

S. Anna Kondratas,

Acting Administrator.

[FR Doc. 87–10669 Filed 5–8–87; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 933

[Docket No. AO F&V 87–1]

Proposed Florida Strawberry Marketing Agreement and Order; Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed marketing agreement and order.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed marketing agreement and

order to cover fresh strawberries grown in Florida. The proposed program would authorize production and market research and development including development of improved varieties of strawberries to promote the marketing, distribution and consumption of strawberries. The proposal was submitted by the Florida Strawberry Growers Association which represents a substantial portion of the Florida strawberry producers and handlers. The program would be financed by assessments levied on Florida strawberry handlers. The assessment rate would be established by the Secretary of Agriculture, based on the recommendation of a committee that would administer the program. The committee would be composed of 12 Florida strawberry producers.

DATES: The hearing will be held in Valrico, Florida, beginning on May 27, 1987 at 9:00 a.m. Additional sessions, if necessary, will be held on May 28 and 29, beginning at 9:00 a.m. at the same location.

ADDRESS: The hearing will be held in the auditorium of the Hillsborough County Farm Bureau Building, 100 South Mulrennan Road, Valrico, Florida 33594.

FOR FURTHER INFORMATION: Copies of this Notice of Hearing may be obtained from:

(1) John Toth, Officer-in-Charge, Southeastern Marketing Field Office, USDA, 500 33rd Street NW., Winter Haven, Florida, 33883; telephone (813) 299–4770; or

(2) James Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2523–S, AMS, USDA, Washington, DC 20250; telephone (202)— 447–5698.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12291. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 ("Act"), as amended (7 U.S.C. 601 et. seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The Regulatory Flexibility Act (Pub. L. 96–354), effective January 1, 1981, applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and reporting requirements of the program are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the reporting requirements and probable economic impact of the proposal on small businesses.

The proposed agreement and order contain no provision for quality control, volume control, or any provisions limiting the right of individual Florida strawberry producers to produce strawberries. Proponents of the order believe that varietal research will result in the development of a new strawberry variety, or varieties, that will be better suited to Florida growing conditions than varieties now used. Proponents also contend that market research and development will improve the efficiency of production and distribution and increase the consumption of Florida strawberries. The proponents believe that mandatory assessments on handlers are the only way to fairly and equitably raise the funds needed to administer the needed research and development activities.

This proposal has been widely discussed within the Florida strawberry industry but has not yet received approval by the Secretary of Agriculture.

The hearing will be held for the purposes of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof;

(b) Determining whether the handling of fresh strawberries in the proposed production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects interstate or foreign commerce.

(c) Determining the need for such a marketing agreement and order that would be implemented for fresh strawberries in the production area.

(d) Determining the economic impact of the proposed marketing agreement and order on the industry in the production area and on the public affected by such a program.

(e) Determining whether the proposal or an appropriate modification of it will tend to effectuate the declared policy of the Act.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Fruit and Vegetable Division, Agricultural Marketing Service

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and are proposed by the Agricultural Marketing Service.

List of Subjects in 7 CFR Part 933

Marketing agreements and orders, Strawberries, Florida.

The marketing agreement and order proposed on behalf of the Florida strawberry producers would add a new Part 933 to read as follows:

PART—933 STRAWBERRIES GROWN IN FLORIDA

Definitions

Sec.
933.01 Secretary.
933.02 Act.
933.03 Person.
933.04 Production area.
933.05 Strawberries.
933.06 Varieties.
933.07 Fiscal period.
933.08 Committee.
933.09 Grower.
933.10 Handler.
933.11 Handle.

Administrative Body

933.20 Establishment and membership.
933.21 Term of office.
933.22 Nomination.
933.23 Selection.
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933.31 Expenses and compensation.
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933.41 Assessments.
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Research and Development

933.50 Research and development.

Reports and Records

933.60 Reports.
933.61 Records.

Miscellaneous Provisions

933.70 Compliance.
933.71 Right of the Secretary.
933.72 Effective time.
933.73 Termination.
933.74 Proceedings after termination.
933.75 Effect of termination of amendment.
933.76 Duration of immunities.
933.77 Agents.
933.78 Derogation.
933.79 Personal liability.

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

Definitions

§ 933.01 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 933.02 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.* 68 Stat. 906, 1047).

§ 933.03 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 933.04 Production area.

"Production area" means the State of Florida. Within the confines of this document, the terms "production area" and "district" are synonymous.

§ 933.05 Strawberries.

"Strawberries" means all varieties of the edible fruit belonging to the roseaceous genus "Fragaria" commonly known as strawberries and grown within the production area.

§ 933.06 Varieties.

"Varieties" means and includes all classifications or subdivisions of strawberries according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 933.07 Fiscal period.

"Fiscal period" means the period beginning January 1 and ending the following December 31, or such other period as the committee, with the approval of the Secretary, may prescribe.

§ 933.08 Committee.

"Committee" means the Florida Strawberry Committee, established pursuant to § 20.

§ 933.09 Grower.

"Grower" is synonymous with "producer" and means any person engaged in a proprietary capacity in the production of fresh strawberries for market.

§ 933.10 Handler.

"Handler" is synonymous with "shipper" and means any person who sells or handles fresh strawberries or causes fresh strawberries to be handled.

§ 933.11 Handle.

"Handle" or "Ship" means to sell, consign, transport, deliver, or in any other way to place fresh strawberries within the production area or between the production area and any point outside thereof: Provided, That the term "handle" shall not include the transportation within the production area of strawberries from the field where grown to a handling facility located within such area for preparation for market.

Administrative Body

§ 933.20 Establishment and membership.

(a) The Florida Strawberry Committee, consisting of 12 producer members, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer, or an officer or an employee of a corporate producer, and a resident of the production area.

(c) The composition of the committee, as much as is feasible, will represent the industry it serves. Handler representation through grower members on the committee will be a consideration for nomination.

§ 933.21 Term of office.

The term of office of committee members, and their respective alternates, shall be four (4) years, beginning on January 1 and ending on December 31 four years later, *Provided,* That (a) The term for one fourth of the initial members shall be for one (1) year; the term for the second fourth of the initial members shall be two (2) years; the term for the third fourth of the initial members shall be three (3) years; and the term for the final fourth of the intitial members shall be four (4) years.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

(c) Any member serving on the Florida Stawberry Committtee will not be eligilble for renomination to the committee for a period of one (1) year. Alternates to the committee will be eligible for renomination at the end of their respective terms.

§ 933.22 Nomination.

The Secretary shall select the members of the committee and alternates from nominations which shall be made in the following manner:

(a) A meeting or meetings of producers shall be held in the production district to nominate members and alternates for the committee. The committee shall hold such meeting or cause them to be held prior to November 15 of each year preceding the beginning of a new term of office or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(b) At each such meeting at least one nominee shall be designated for each committee member and alternative whose term expires December 31 of the same year.

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as may be prescribed, not later than December 1 of each year preceding the beginning of a new term of office, or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(d) Only producers may participate in the nomination process.

§ 933.23 Selection.

The Secretary shall select all members of the commitee and their respective alternates, from nominations made pursuant to § 933.22, or from other qualified persons.

§ 933.24 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 933.22, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in § 933.20.

§ 933.25 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ 933.26 Vacancies.

To fill any vacancy, occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in a manner specified in §§ 933.22 and 933.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § 933.20.

§ 933.27 Alternate members.

(a) An alternate member of the committee shall act in the place and stead of the member for whom tha individual is an alternate, during the member's absence. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act until a successor of such member is selected and has qualified.

(b) If both a member and a respective alternate are unable to attend a committee meeting, the committee may designate any other alternate present to serve in place of the absent member.

§ 933.28 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 933.29 Duties.

It shall be, among other things, the duty of the committee:

(a) At the beginning of each fiscal year, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping and marketing conditions with respect to strawberries;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(g) At the beginning of each fiscal period and as may be necessary thereafter, to prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompaying report showing the basis for its calculations;

(h) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(i) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

§ 933.30 Procedure.

(a) Seven members of the committee, including alternatives acting for members, shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: Provided, That if any assembled meeting is held, all votes shall be cast in person.

(c) The committee shall give the Secretary the same notice of meetings as is given to the members thereof.

§ 933.31 Expenses and compensation.

Members of the Committee, their alternatives, subcommittees including any special subcommittees, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

Expenses and Assessments

§ 933.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as described in § 933.41.

§ 933.41 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by levying assessments upon handlers as provided in this subpart. The means for collecting said assessments shall be as follows: Each handler who first handles strawberries shall, on demand, pay to the committee such handler's pro rata share of the expenses which the Secretary finds will be incurred by the committee.

(b) Assessments shall be levied at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information.

(c) At any time during, or subsequent to, a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all strawberries which were regulated under this part.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative. If a handler does not pay said assessment within the time prescribed by the committee, the unpaid assessment may be subject to an interest charge at rates prescribed by the committee with the approval of the Secretary.

(e) In order to provide funds for the administration for the provisions of this

part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance and may also borrow money for such purpose.

(f) The committee may accept voluntary contributions, but these shall only be used to pay expenses pursuant to § 933.50. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use. The committee may not receive contributions from any person whose contributions would constitute a conflict of interest.

§ 933.42 Accounting.

(a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternatives, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member of the committee or alternate, such person shall account to his/her successor, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds and property (including but not being limited to books and other records) pertaining to the committee's activities for which such person is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, the committee, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

§ 933.43 Excess funds.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, to the extent practical it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established; Provided, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used (i) to defray any expenses authorized under this part, (ii) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (iii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iv) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and (v) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation, and after reasonable effort by the committee it is found impracticable to return such funds on a prorata basis to the persons from whom such funds were collected, these funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

Research and Development

§ 933.50 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects, including production research, varietal research, and marketing research to promote efficient production of strawberries, as well as development projects and marketing promotion, designed to assist, improve, or promote the marketing, distribution, and consumption of fresh strawberries. The expenses of such projects shall be paid from funds collected pursuant to § 933.41. Upon conclusion of each program, but at least annually, the committee shall summarize and report on the program status and accomplishments to its members and the Secretary. A similar report to the committee shall be required of any contracting party on any such project.

Reports and Records

§ 933.60 Reports.

Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the quantities of strawberries received by a handler and the quantities disposed of by such handler.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers' identities or operations.

§ 933.61 Records.

Each handler shall maintain for at least two succeeding years such records of the strawberries received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

Miscellaneous Provisions

§ 933.70 Compliance.

Except as provided in this part, no handler shall handle strawberries except in conformity to the provisions of this part.

§ 933.71 Right of the Secretary.

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 933.72 Effective time.

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 933.73 Termination.

(a) The Secretary may, at any time, terminate this subpart.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever

it is found that such operation obstructs or does not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of the growers of strawberries, who, during such fiscal period, have been engaged in the area in the production of strawberries for market: *Provided*, That such majority have produced for market during such period more than 50 percent of the volume of strawberriers produced for market in the area; but such termination shall be effective only if announced on or before December 31 of that fiscal period.

(d) The committee shall recommend to the Secretary within ten years of the effective date hereof that a referendum be conducted to ascertain whether continuance of this subpart is favored by the members. Subsequent referenda to ascertain whether continuance of this subpart is favored by the members are to be conducted every six years after the date of the preceding referendum.

(e) The provisions of this subpart shall terminate, in any event, whenever the provisions of the act authorizing the same cease to be in effect.

§ 933.74 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary my direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 933.75 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termintion of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 933.76 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 933.77 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this subpart.

§ 933.78 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 933.79 Personal liability.

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any grower, handler, or to any person for errors in judgment, mistakes, or other acts, either of commission or ommission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 933.80 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstances, or thing is held invalid, the validity of the remainder of this part, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 933.81 Amendments.

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

***§ 933.90 Counterparts**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 933.91 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 933.92 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of fresh Florida strawberries in the same manner as is provided for in this agreement.

Dated: May 6, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-10683 Filed 5-8-87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 1033, 1036, and 1040

[Docket Nos. AO-166-A56, AO-179-A51, AO-225-A38]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the classification

provisions of the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan milk orders based on industry proposals considered at a public hearing held October 28, 1986. Several changes recommended would eliminate raw product cost differences for certain uses of milk between regulated handlers in the three markets under consideration and, particularly, handlers in the nearby Indiana and Chicago Regional markets. The result of these changes will provide the same classified price structure for skim milk and butterfat used in the production of ice cream and other related products, eggnog, and buttermilk biscuit mixes throughout the region.

The decision also recommends several changes in the Southern Michigan order only that would make it easier to qualify milk for pool status. In this regard, the pooling standards for cooperative plants and units are relaxed. Also, less-restrictive diversion provisions are adopted. These changes reflect current marketing conditions and will facilitate the orderly marketing of the market's reserve milk supplies.

DATE: Comments are due on or before May 26, 1987.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

Several of the proposed amendments would modify the classification provisions of the three orders in order to eliminate raw product cost differences for certain uses of milk among handlers regulated by these and nearby orders of the region. The principal changed marketing condition involves an overlap in distribution due to fewer but larger pool plants that operate over much larger areas. Correcting for the cost discrepancy between orders through amendments proposed herein will not result in a significant added price impact on regulated handlers. In fact, only about 7 percent of the producer milk in these three markets will be reclassified and priced slightly higher.

Other proposed amendments herein would modify the pooling standards and the diversion provisions of the Southern Michigan milk order to make it conform more closely to current economic conditions that exist in the marketplace. In this regard, the principal changed marketing condition involves the market's supply-demand relationship for milk, exemplified in a 26 percentage point decrease in the market's Class I utilization percentage since the present provisions were adopted. Reflection of this changed marketing condition through amendments made herein should lessen the regulatory impact of the order on regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued October 14, 1986; published October 17, 1986 (51 FR 37037).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington DC 20250 by the 15th day after publication of this decision in the **Federal Register.** Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Romulus, Michigan, on October 28, 1986, pursuant to a notice of hearing issued October 14, 1986 (51 FR 37037).

The material issues on the record of hearing relate to:

1. Classification changes.
2. Class II price.
3. Pooling standards.
4. Diversion of producer milk.
5. Expedited action.

Findings and Conclusions

1. *Classification changes.* (a) *Classification of ice cream and related products under the Ohio Valley, Eastern Ohio-Western Pennsylvania and Southern Michigan orders.* Skim milk and butterfat in ice cream and related products should be reclassified from Class III to Class II in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan milk orders (i.e., Federal Orders 33, 36, and 40). The products involved would specifically include frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product. Reclassification to Class II of skim milk and butterfat used in ice cream and related products will provide for more orderly marketing conditions for regulated handlers.

Two cooperative associations, Milk Marketing, Inc. (MMI) and Michigan Milk Producers Association (MMPA), proposed the reclassification of ice cream and related products from Class III to Class II in Federal orders 33, 36 and 40. The proposals were supported by another cooperative association, Independent Cooperative Milk Producers (ICMP) of Grand Rapids, Michigan, and by three proprietary handlers regulated under Federal order 49 (the Indiana milk order), namely, Miller Corporation, New Paris Creamery Company, Inc., and Wayne Dairy Products, Inc. Although at the hearing there was no direct opposition to the reclassification proposals, a proprietary handler, Dean Foods, Company (Dean), and a federation of cooperatives, Central Milk Producers Cooperative (CMPC), suggested modifications to the original proposals. Opposition to MMI's reclassification proposal for Order 36 was expressed in the brief of R. Bruce Fike & Sons Dairy, Inc. (Fike).

The spokesman for MMI also testified on behalf of Farmers, Union, Scioto County Co-operative, Huntington Interstate Milk Producers Association, and Dairymen Incorporated. Together they represent over half of the producers whose milk is pooled under Federal orders 33, 36, and 49. MMI's spokesman stated that handlers regulated under Federal orders 11 (Tennessee Valley), 46 (Louisville-Lexington-Evansville), and 49 (Indiana), whose marketing areas are contiguous to the Ohio Valley marketing area, have complained that the Order 33 handlers have a competitive advantage

in the sale of ice cream and related products. The witness attributed this advantage to a difference in the classification and price of milk used to produce these products under the orders (i.e., Class III in Order 33 and Class II in Orders 11, 46, and 49) and to an overlap in the sales areas. Proponent referred to an exhibit which he had requested for the hearing to show the inter-market movement of fluid milk. Working under the assumption that ice cream and related products have distribution networks similar to those for fluid milk, if not broader, he stated that the Order 33 handlers have a clear advantage in terms of raw costs for milk used in such products over their neighbors. He further stated that the same reasoning holds for the Order 36 situation and applies to similar proposals for Order 40.

The MMI spokesman also pointed out that the price difference between Class II and Class III can at times go beyond the ten cent differential value because of the operation of the advance Class II pricing formula. However, he added that reclassifying to Class II ice cream and related products would not impact greatly on the blend price to producers.

The opposition brief filed on behalf of Fike concurred with MMI that reclassification of ice cream and related products in Order 36 should not have a significant impact on the market. However, Fike alleged that such action would have a significant impact on individual ice cream manufacturers regulated under Order 36, and thus, questioned whether reclassification should take place. Furthermore, it is Fike's opinion that such action is discriminatory towards ice cream manufacturers in that their product was selected for up-classification and cheese was not even though cheese plants compete for the same milk supply. It was Fike's belief that if reclassification is the outcome of this proceeding, then the use of cheaper ingredients, (i.e., butter, powder) instead of producer milk will be on the rise. Lastly, Fike stated that permanent changes should not be made to accommodate temporary imbalances between markets with differences in classification for the same uses of milk.

The witness for MMPA testified that the Order 40 handlers enjoy a competitive advantage over their competitors regulated under neighboring orders because frozen desert type products are given a lower Class III classification and price under Order 40 as opposed to a Class II classification and price under Orders 30 (Chicago Regional) and 49. He stated that MMPA, like MMI, has received complaints from ice cream processors regulated under nearby orders about the price differences. He pointed out that since the implementation of advance Class II pricing, the difference between the Class II and Class III prices, instead of being approximately ten cents, has become much wider. The difference in class prices and thus the difference between the orders in the cost of milk going into these products, he claimed, results in disorderly marketing. Therefore, he rationalized that the same classification should apply to milk used to produce frozen products as is now in effect in adjacent markets in order to properly align the price that regulated handlers pay for milk. MMPA indicated in its brief that this rationalization also applies when considering the MMI proposals.

Furthermore, MMPA's witness pointed out that one can make the same claim today for the reclassification of frozen dessert type products as was made for cottage cheese in 1968 and for sour cream, eggnog, and yogurt in 1973; and that is, that handlers rely upon producers for a regular supply of high quality milk for making these products. Therefore, he also believes that these products should be reclassified in order to reflect the added value associated with milk used to produce them.

The MMPA spokesman added that a reclassification of these products from Class III to the higher priced Class II should not impact the Order 40 blend price by any significant amount because of MMPA's proposal to simultaneously reduce the Class II price by five cents, (this issue will be addressed later in this decision).

The basic issue developed on the record for consideration is whether certain regulated handlers have a competitive advantage over other regulated handlers that requires certain products to be reclassified in order to eliminate this advantage.

Under Orders 33, 36, and 40, a Class III classification and price applies to milk used to produce ice cream and related products while under the nearby orders of Indiana (Order 49), Chicago Regional (Order 30), Louisville-Lexington-Evansville (Order 46), and Tennessee Valley (Order 11), milk for the same uses is Class II. From January 1984 through September 1986, the cost to handlers who paid the Class II price for milk used in the production of ice cream and related products was on the average 12.5 cents per hundredweight greater than the cost to handlers who paid the Class III price for such milk uses, ranging from 0 cents to 55 cents higher throughout the 33 month period. This difference would not cause a problem if each order were isolated and there were no overlap in distribution. However, the record establishes that presently there are fewer, larger plants where ice cream and related products are produced that operate over much larger areas. Therefore, substantial inter-market competition occurs between handlers regulated under different orders. Because a difference in classification and price exists, some handlers have a distinct advantage over others. Reclassification, as adopted herein, will take away any competitive advantage in raw milk costs that ice cream manufacturers under Orders 33, 36, and 40 now have over other order handlers and will place them on a par with these competitors.

Data introduced into the record established that there is an overlap in sales areas for fluid milk. One exhibit showed that handlers regulated under five other orders (i.e., Federal orders 11, 36, 40, 46, and 49) have packaged Class I disposition in the Order 33 marketing area while Order 33 handlers have disposition in these same five marketing areas. Also, the witness for MMPA testified that there is substantial competition between Order 40, 49, and 30 handlers. Both proponents testified that distribution patterns for ice cream are similar to packaged Class I disposition. In fact, they claimed that the sales territory of an ice cream processor tends to be larger than the sales territory of a fluid milk processor. Such evidence clearly shows there is a need for uniform classification and pricing of milk used in ice cream and related products under the orders of the region.

Other data introduced into the record showed that for the 33-month period of January 1984 through September 1986, the Class II price in competing orders (i.e., Federal orders 11, 30, 46 and 49) exceeded the Class III price in 23 months. Such data is contrary to Fike's contention that the imbalance between orders is only temporary. Furthermore, during that same 33 month period, the difference in class prices went beyond 10 cents in 17 months, ranging from 11 cents to 55 cents over.

The frequent disparity between Class II and Class III prices can be attributed to the use of the advance Class II formula pricing which is presently used in 39 Federal orders, including all of the orders cited in this decision. The Class II price reflects the Minnesota-Wisconsin (M-W) price for the second preceding month adjusted for subsequent changes in product market prices. Ideally, such calculations should yield a Class II price

that is ten cents greater than the current month's Minnesota-Wisconsin price (i.e., the Class III price). However, in times of rapid downward change in the M-W price, a wide difference between the Class II and Class III prices can occur due to the lag which is built into the formula. For instance, in July 1985 the difference between the Class II price in orders 11, 30, 46 and 49 and the Class III price was 55 cents, due to virtually no change in product market prices in early May and June 1985 and a drop in the M-W price of 36 cents from May to July. (Official Notice is taken of Dairy Market News Vol. 52 Report Nos. 18, 19, 20, 23, 24, and 30.) Such occurrences further enhance the advantage that Order 33, 36, and 40 handlers already have over other order handlers with whom they compete in common sales areas.

As the witness for MMPA pointed out in his testimony, the rationale set forth in decisions providing for a Class II classification for cottage cheese, yogurt, sour cream, etc., also applies when considering the frozen dessert products herein proposed to be reclassified. In the findings and conclusions of the Assistant Secretary's decision of February 19, 1974 (39 FR 8712 concerning uniform classification for 39 markets, official notice of which is taken, he concluded that,

> The demand for producer milk used in these products is related closely to the current consumer demand for such products. Thus, handlers normally want adequate supplies of producer milk made available at their plants in the quantities and at the times needed for these uses. This is in contrast to the more storable residual "hard" products. Also the processing of such products often takes place at the market center, which entails a greater hauling expense for producers than when reserve milk is processed in the production area.

This rationale is equally applicable to the reclassification of ice cream and related products in the three markets in question.

At the hearing, Dean and CMPC suggested that the classification provisions of the orders under consideration be amended to make them identical with those orders which were involved in the uniform classification decision. To do so, it would make the classification provisions of Orders 33, 36, and 40 identical with Orders 30 and 49 in particular. This would involve reclassifying, in addition to those products proposed, infant and dietary formulas packaged in hermetically sealed glass or metal containers, plastic cream, anhydrous milk fat, custards, puddings, and pancake mixes (Order 40 market only).

The spokesman for CMPC alleged that, in part, the purpose for which the hearing was called was to insure uniformity. His belief was that the MMI and MMPA proposals did not go far enough, that is, they were not all inclusive, and therefore, fell short of the uniformity goal. Likewise, Dean's spokesman testified in favor of classification uniformity between the three orders under consideration and the orders that were involved in the uniform classification decision as a matter of principle.

There were no proposals submitted for inclusion in the hearing notice in response to the Department's invitation that dealt with adopting the uniform classification scheme referred to previously for the three markets herein considered. Thus, the requests of Dean and CMPC to adopt uniform classification provision in the three markets was not within the scope of the proceeding. The Administrative Procedure Act (5 U.S.C. 553(b)) requires that the notice of hearing contain the "terms or substance of the proposed rule or a description of the subjects and issues involved." Accordingly, CMPC's and Dean's requests are denied.

It must be noted that in addition to the classification changes for the three markets, a change has also been made in the composition standard for determining the classification of milk shake and ice milk mixes under Order 36. As provided herein, the classification of skim milk and butterfat in milk shake and ice milk mixes should be determined on the basis of the total solids content of the product. A Class I classification should apply to milk shake and ice milk mixes containing less than 20 percent total solids. Conversely, and as already stated, milk shake and ice milk mixes with 29 percent or more total solids should be Class II.

Presently under Order 36, milk shake and ice milk mixes containing less than 12 percent total milk solids are Class I and those with 12 percent or more total milk solids are Class III. MMI proposed the change from "12 percent total milk solids" to "20 percent total solids". There was no opposition to the proposal. Under Federal orders 33 and 40, the other orders under consideration, milk shake and ice milk mixes containing less than 20 percent total solids are Class I. Therefore, this change comports with the reclassification of ice cream and related products adopted herein.

Statistics and testimony presented at the hearing indicated that the change in the classification of ice cream and related products adopted herein will not significantly impact the blend prices paid to producers. In all three orders it was estimated that reclassification would have had only a one or two cent impact on the blend price if it had any impact at all. Even in July 1985, when the Class II price exceeded the Class III price by 55 cents, the effect on the blend price in Orders 3 and 40 would have only been six cents and two cents respectively. Therefore, such change is not expected to result in any measureable impact on the level of milk production in these markets.

(b) *Classification of eggnog under the Eastern Ohio-Western Pennsylvania order.* Under Order 36, skim milk and butterfat used to produce eggnog should be Class II. Under the present order, eggnog is Class III.

MMI's proposal to reclassify eggnog from Class III to Class II was unopposed at the hearing. Proponent testified that including eggnog in Class II is appropriate because it is given this classification in Federal orders 33 and 40. Proponent added that marketing conditions are about the same for eggnog as for frozen dessert type products.

Eggnog is distributed on an intermarket basis similar to the marketing of ice cream and related products which are proposed to be reclassified herein. Therefore, eggnog should be given a Class II classification for the reasons already cited in connection with frozen products.

(c) *Classification of buttermilk biscuit mixes under the Ohio Valley and Southern Michigan orders.* Under orders 33 and 40, a Class III classification should apply to skim milk and butterfat used to produce a product labled "buttermilk biscuit mixes". Presently, this product is not designated in the classification provisions of the two orders.

Kroger proposed that this product be given a Class II classification in Order 33 and a Class III classification in Order 40. At the hearing, the Kroger spokesman stated that its proposal simply classifies the new product buttermilk biscuit mixes the same as each order now classifies pancake mixes. He added that Kroger would not opposed a decision by the Department to place buttermilk biscuit mixes in Class II in the Southern Michigan order. However, he declined to modify his proposal.

The Kroger proposal was basically supported by three Indiana handlers and was opposed by Dean. Although CMPC supported the proposal, it suggested that it be modified to provide a Class II classification for buttermilk biscuit mixes in all three orders under

consideration. CMPC also requested a Class II classification for all new nonfluid milk products that should come onto the markets in the future.

The Kroger spokesman indicated that its development of a new buttermilk biscuit mix product to be used in the making of biscuits prompted them to make such a proposal. The mixture, proponent stated, would contain fluid buttermilk with two percent or more added flour which meets the standards of identity for a food product rather than a fluid milk product as issued by the Food and Drug Administration, U.S. Department of Health and Human Services. Proponent further stated that the product is planned to be distributed to Kentucky Fried Chicken distribution centers from Chicago to New Jersey. He claimed that a classification other than Class I should apply to the mixture so that it will provide more equitable pricing in relation to substitute dried products that can be used in making buttermilk biscuits.

Since the new product was not intended to be distributed for use as a beverage and because the record shows that its basic composition is a nonfluid milk product, it is appropriate to classify the product in question in a lower priced class. It would appear that, if it were not for other overriding considerations, buttermilk biscuit mixes should be included, as proponent proposed, in the same class as pancake mixes since both products have about the same utility value and must be made from quality milk available on a regular basis. However, other factors must be considered including the fact that pancake mix is classified differently between Orders 33 and 40, Class II in the former order and Class III in the latter order. Beyond this, if a new product other than a fluid milk product, like buttermilk biscuit mix, was marketed by a handler regulated by most any other order, including the nearby orders, a Class III classification would apply. This is because most orders specify that milk used to produce a product, such a buttermilk biscuit mix, which is not a designated or listed product under the order's classification provisions, is Class III. In view of these considerations, a Class III classification for buttermilk biscuit mixes in the two markets is appropriate. Such classification will place Order 33 and Order 40 handlers on a comparable basis with handlers in other regulated markets as to their costs under the orders for skim milk and butterfat used in buttermilk biscuit mixes.

While several Order 49 handlers supported establishing a lower classification for buttermilk biscuit mixes, they did express concern that such lower classification could jeopardize their ability to meet the requirements for pool qualification. As adopted herein, only milk and butterfat used to produce buttermilk biscuit mixes is given a Class III classification. Buttermilk as fluid milk product sold to restaurants and subsequently used in biscuits will continue to be Class I. Thus, only if handlers choose to make and distribute buttermilk biscuit mixes will they reduce their Class I utilization. Even so, their concern is a pooling rather than a classification problem and is not a compelling factor in considering the proper classification for the product buttermilk biscuit mix.

In opposing Kroger's proposal, Dean's witness testified that the proposal, if adopted, will result in lower monetary returns to producers.

This, however, does not provide an adequate basis for not adopting a lower classification for the product in question. It is not anticipated that classifying buttermilk biscuit mixes in Class III will have any significant impact on returns to producers in the two markets involved.

The CMPC suggestion to place all new nonfluid milk products that should come onto the markets in the future into Class II rather than Class III should not be adopted. It would not be appropriate to consider such a modification except on a regional or national basis if orderly marketing is to be maintained.

2. *Class II price under Order 40.* The Class II price for the month should be the basic Class II formula price for the month plus a differential that would be the amount by which a 12-month moving average of the basic formula price plus 10 cents exceeds a 12-month moving average of the basic Class II formula prices. This should result in a Class II price that an average exceeds the Class III price by 10 cents. Presently, such pricing applies in Orders 33 and 36, whereas in Order 40, the Class II price is determined by adjusting the Class II formula price by a differential that adds 15 cents to the basic formula price.

MMPA proposed that the Class II differential be revised from 15 cents to 10 cents per hundredweight in conjunction with its request to reclassify ice cream and related products as Class II. The spokesman for MMPA stated that the Order 40 Class II price often exceeds nearby orders' class II prices by five cents due to differences in the orders' Class II differentials. The witness held that this is a corollary change needed to achieve uniformity in the classification and pricing of ice cream and related products in the region.

In light of the decision made herein to reclassify certain products from Class III to Class II in order to eliminate raw product cost differences in the region, the Order 40 Class II price should also be aligned. Otherwise, handlers regulated under Order 40 who process ice cream and related products would incur a 5 cent higher raw milk price than would be the case for nearby and adjacent other-order handlers. The effect on the blend price of reducing the Class II differential by 5 cents will be negligible when coupled with the reclassification of the frozen dessert type products. Statistics presented at the hearing revealed that the impact of this change in Class II pricing coupled with the classification changes adopted herein will result in an insignificant impact on the blend price (1 or 2 cents if any).

Accordingly, the Class II price should be based on the average of the M–W price plus 10 cents.

3. *Pooling standards for plants other than distributing plants under the Southern Michigan order.* (a) *Supply plants (other than cooperative balancing plants).* The period during which supply plants or a unit of supply plants must ship milk to pool distributing plants to be eligible for automatic pooling status in a later period should be changed from October through March to September through February. Presently, a supply plant or a unit of supply plants that met the pooling standards for each of the months of October through March is automatically qualified for pool status during the following months of April through September without having to meet any shipping requirements.

The principal supplier of fluid milk to the market's pool distributing plants, MMPA, proposed that the months of September through March rather than October through March, should be used as the qualifying period in which a supply plant may earn automatic pooling status for the following months of April through August. Proponent testified that the cooperative's proposal was one of several designed to update the pooling standards for plants other than distributing plants. The proponent's witness stated that including September as a qualifying month for supply plants comports with current marketing conditions in which this is the beginning of the period when there is greater demand for supply plant milk.

Another producer group associated with the market, National Farmers Organization (NFO), supported adding

September as the first month in the qualifying period. However, the organization proposed that March be eliminated as a qualifying month for automatic pooling. A spokesman for NFO testified that the Class I utilization during March is more related to the automatic pooling spring and summer months than to the higher utilization months in the fall and winter. He indicated that there is no need to increase the number of months included in the qualifying period as MMPA proposed since additional supply plant milk is not needed.

The months of September-February rather than October-March should be used as the qualifying period in which a supply plant may earn automatic pooling status for the following months of March-August when there is less demand for supply plant milk. This change would more nearly reflect the current seasonal supply-demand pattern for the market. The six months of September-February is the period when milk production is lower relative to demand than in the following six months. For example, during the most recent such six-month period (September 1985 through February 1986) for which data were available at the hearing, Class I utilization of producer milk was 44 percent. In the following six months (March through August 1986) the comparable Class I utilization was 40 percent.

As noted previously, March should be replaced with September as a month in which supply plants are required to make shipments to pool distributing plants. March is the beginning month when production starts its seasonal climb and Class I utilization percentage decline. For example, average daily deliveries by producers serving the Southern Michigan market in March were higher than in February during the entire 1983 through 1986 period. During the same period, Class I utilization of producer milk in March was a lesser percentage than in February except for 1984. This relationship indicates that the supply-demand pattern for March is more comparable with that for the current months of automatic pooling than with that for the months when supply plants are now required to ship milk.

In contrast, September marks the beginning of the period when supply plants should be encouraged to make shipments to distributing plants. This month is now a month of strong demand relative to production. Except for 1986, average daily deliveries in September were lower than in August during the 1983-86 period. For the years 1983 , 1984, 1985 and 1986, the Class I utilization of producer milk in September was 43, 42, 41 and 47 percent, respectively. These percentages for September are essentially at the same level or higher than for most months with greater Class I sales. In this circumstance, it is appropriate to use September rather than March as a qualifying month.

By using September as the starting month of the qualifying period, the Southern Michigan order will be better coordinated with neighboring orders, such as the Chicago Regional order, Indiana order and Ohio Valley order since these orders also use September as the starting month of the qualifying period. Such coordination will assist in planning by handlers and cooperatives concerning which plants and producers to associate with which markets during the qualifying period.

The record, however, does not support MMPA's proposal to expand the number of months included in the qualifying period. Rather, supply plant shipments should be required only when supply plant milk is likely to be needed to meet fluid milk sales. Deleting March as a qualifying month for supply plants and replacing it with September will promote more orderly marketing conditions in that shipments to distributing plants will not be required at a time when supply plants normally are not needed to supplement their fluid milk needs.

(b) *Cooperative balancing plants.* Several modifications should be made in the pooling standards for supply plants operated by a cooperative association.

First, a cooperative operated supply plant or a unit of such plants should continue to acquire pool status on the basis of the cooperative's or unit's overall marketwide performance as evidenced by its total milk movements to distributing plants either by transfer or directly from member producers' farms. However, the quantity of such deliveries needed to qualify this type of plant or unit should be for each month based on a ratio of the market's Class I sales to producer receipts during the same month of the previous year. Changes up or down in this ratio would have to exceed 5 percentage points before the delivery requirement for such plants would change.

Second, any such plant or unit that acquires pool plant status during each of the months of September-February should automatically retain pool plant status for each of the following months of March-August without having to meet any delivery requirement.

Third, a cooperative association(s) should be permitted to include in a balancing plant pooling unit a supply plant(s) operated by a proprietary handler in addition to any plant(s) operated by a cooperative(s). Under this revision, such pooling unit would have to collectively meet the standards herein adopted for a cooperative balancing plant without each individual plant in the unit required to meet a minimum delivery standard.

Fourth, supply plants to be eligible to qualify for pool status as part of a cooperative balancing plant pooling unit should be located within the state of Michigan.

Presently, the order provides separate pooling requirements for supply plants operated by a cooperative association. As provided, a supply plant operated by a cooperative association may qualify as a pool plant if the cooperative delivers at least 50 percent of its members' producer milk, either directly from farms or by transfer from the supply plant to distributing plants. If the cooperative, however, does not meet this 50 percent delivery requirement for the month, the balancing plant can retain its pool plant status for the month if it qualified in each of the preceding 13 months and at least one-half of its members' milk was delivered to distributing plants during the second through the 13th preceding months. Additionally, a cooperative operated plant that is located in the marketing area that has been a pool plant for 12 consecutive months, but which otherwise does not qualify, can acquire pool plant status for the plant if the cooperative has a marketing agreement with another cooperative association whose members deliver at least 50 percent of their milk during the month directly to pool distributing plants. Their total deliveries of member milk to distributing plant, either directly from farms or by transfer from the plant, must not be less than 50 percent of the cooperatives combined member producer milk.

MMPA, who at the time of the hearing operated six pool supply plants under the order, proposed essentially the changes adopted herein that would ease the requirements for pooling a cooperative balancing plant or a unit of such plants. Proponent's witness testified that the changes proposed were designed to correct a long-standing problem encountered by the proponent cooperative in maintaining pool status for all of the milk of its member producers who have been historically associated with the market. The cooperative's witness claimed that the current pooling requirements for the market's principal balancer of supplies

for the market are "too inflexible and do not reflect current market conditions." He indicted that MMPA, in order to avoid unnecessary and uneconomic movements of reserve milk supplies, has frequently requested the Department to suspend to suspend the pooling requirements for a cooperative balancing plant. On the basis of these requests, such pooling requirements have been suspended during most months since May 1982.

Basically, MMPA testified that its pooling problem stems from two developments that have occurred in the market which were not prevalent when the present pooling requirements for cooperative balancing plants were established in 1968, namely, (1) changes in the relationship of producer milk supplies to Class I sales, and (2) decline in the daily and seasonal demand for supply plant milk. Proponent contended that performance standards should not be established at a level that milk regularly associated with the market can maintain pool status only if uneconomical movements are made for the purpose of qualifying a cooperative balancing plant.

NFO similarly proposed and supported at the hearing relaxing the requirements for pooling a cooperative balancing plant. The organization cited generally the same marketing conditions in support of lower pooling standards for cooperative balancing plants as did MMPA. In this regard, NFO's witness testified that the present qualification requirements for such plants are too inflexible and do not reflect present supply-demand conditions. There was no opposition to any of the proposed changes.

A review of marketing conditions shows that significant changes have occurred since the pooling requirements for cooperative balancing plants were established in 1968. The primary factors affecting the pooling of balancing plants operated by cooperative associations in the increase in producer milk on the market without a corresponding increase in the proportion of such milk used in Class I.

To illustrate, total producer milk on the market increased from 4,609 million pounds in 1981 to 4,970 million pounds in 1985, up nearly eight percent. (Official notice is taken of the 1982 annual summarly of "Federal Milk Order Market Statistics," Statistical Bulletin No. 698, published by the Dairy Division, AMS, USDA.) While in 1986, total producer milk in the first nine months was slightly less (1.2 percent) than a year before, the record evidence indicates that this is only a temporary situation and the normal trend in producer receipts is expected to continue upward.

Conversely, during the five-year period of 1981 through 1985, producer milk utilized in Class I outlets decreased from 2,109 million pounds in 1981 to 2,074, down nearly two percent. For the first nine months of 1986, there was no change in the percentage of producer milk used in Class I compared to the same period in 1985. Also, record data indicate that the Class I use of the market's producer milk averaged 68 percent in 1968, which was the year when the performance requirements for balancing plants were last considered at a hearing. In contrast, Class I use of producer milk in 1985 declined to an average of 42 percent (26 percentage points lower than 1968).

As noted previously, because of these change in supply-demand relationships, MMPA on a number of occasions since 1982 requested a suspension of the 50 percent delivery requirement for balancing plants. Based on the cooperative's requests, this delivery requirement was suspended for 30 months during the period of May 1982 through September 1986. Proponent cooperative testified that without such suspensions, it would have had to deliver substantially more milk to distributing plants than they needed and then backhaul the excess milk to manufacturing plants solely to maintain pool status for its balancing plants. Thus, the suspensions permitted the proponent cooperative to pool all of its members' milk without incurring unnecessary handling and transportation expenses.

Suspensions, however, are only temporary solutions and are not designed as a solution to an on-going marketing problem. Performance standards for a balancing plant must be changed as conditions in the market change. Under the present conditions existing in the market, it would not be in the interest of orderly marketing to continue the present pooling standards for cooperative balancing plants since they do not accomodate the continued pool status for some of such plants and some producers who have been and continue to be regular suppliers of the market's fluid milk needs.

In view of current supply-demand conditions and in recognition of the additional reserve milk supplies that must be handled through balancing plants in supplying the current fluid needs of the market, the delivery requirement to pool balancing plants should be reduced. This can best be accomplished by providing that the delivery requirement for each month be based on the market's Class I utilization percentage in the same month of the prior year. Changes up or down in this percentage would have to exceed 5 percentage points before the delivery requirement for such plants would be adjusted. This will provide a degree of adjusting automatically such delivery requirements to reflect seasonal and long-term changes in the relationship of producer milk supplies to Class I sales. Use of Class I utilization data for the same month of the preceding year should be entirely appropriate as a measure of the market's Class I needs since for any particular month the Class I utilization percentage for the market does not materially change from one year to the next.

MMPA proposed that only Class I route a sales rather than total Class I sales be used as measure of the market's Class I needs. The cooperative believed that this measure was essential in eliminating the influence of variations in Class I transfer to other markets from one year to the next. The record evidence, however, does not indicate this is a problem warranting the adoption of Class I route sales data as a measuare of the market's demand.

Under the scheme adopted herein, the applicable delivery percentages for each month of 1985 would have been 35 percent for the period of May-August, 40 percent for March, April, September, October and December and 45 percent for the remaining three months, averaging 40 percent for the year. This requests an average reduction of 10 percentage points for the year. This lower delivery standard should be adequate to assure that milk associated with balancing plants will continue to be available to distributing plants when needed. It also should reduce to a minimum the need for uneconomic movements of reserve milk supplies which otherwise might be made solely to maintain pool status for a balancing plant.

The order should be modified to provide that a balancing plant or unit of balancing plants that have met the pool performance delivery standards for each of the months of September through February is automatically qualified for pool status during the following months of March through August regardless of the volume of deliveries to distributing plants. Under the present terms of the order, the delivery requirement for a balancing plant is 50 percent for each month.

This modification was a companion balancing plant pooling proposal of MMPA which was supported at the hearing by NFO. Proponent stated that this proposal was made for the purpose

of insuring that a balancing plant would not lose its pool status during the months when producer receipts were high in relation to Class I sales. Proponent contended that the automatic pool plant status provision for a balancing plant was needed to accomodate the handling of reserve milk supplies on an efficient basis.

Permitting automatic pool plant status for a balancing plant during the months of March through August on the basis of performance during the preceding September through February period is appropriate in view of the seasonal patterns of milk supplies and sales. A cooperative which serves the majority of the market's fluid needs and has the burden of disposing of the market's reserve milk supplies should be provided the opportunity to pool its balancing plants on a basis which promotes efficiency in operations. Allowing for automatic pooling will assist in accomplishing this and should reduce to a minimum the circumstances of uneconomic handling and movements of reserve milk supplies solely for the purpose of qualifying a cooperative's balancing plants.

The order should also be amended to allow a cooperative association operating a balancing plant(s) to form a balancing plant unit with one or more supply plants operated by a proprietary handler. A proposal to do so was made by MMPA. It was a corollary proposal to the cooperative's series of proposals to update the requirements for pooling a cooperative balancing plant in line with current marketing conditions.

The purpose of the proposasl, as stated by proponent, is to enable the cooperative in supplying a large portion of the market's fluid milk needs to perform this function more efficiently. As indicated by the witness, this modification, which is optional, would allow a cooperative to supply the fluid milk needs of the market according to the availability of milk supplies in relation to the location of the distributing plant needing fluid milk rather than requiring a unit of individual plants to ship milk to distributing plants simply to qualify the unit for pooling purposes.

It is concluded that this modification, which allows supply plants operated by a proprietary handler to be included in a cooperative balancing plant pooling unit, is desirable and reasonable under current marketing conditions. This pooling arrangement, in combination with other changes adopted herein which respect to the requirements for pooling a cooperative balancing plant, is expected to accommodate this situation for which the proponent cooperative requested the modification. Permitting a balancing plant pooling unit to include a supply plant(s) of a proprietary handler will promote the efficient handling of milk supplies and eliminate the hauling of producer milk first to a supply plant an then to a distributing plant solely to aid the supply plant or unit of supply plants in meeting the order's pooling requirements.

The order should be modified to provide that supply plants to be eligible to qualify for pool status as part of a cooperative balancing plant pooling unit be located within the state of Michigan. Presently, plants that qualify for pool status as part of a balancing unit must be located within the Southern Michigan order's marketing area.

As part of its package of proposed changes to ease the pooling requirements for a cooperative balancing plant, MMPA proposed that no geographical restriction apply to where a plant that qualifies for pool status as part of a balancing plant pooling unit is located. Proponent testified that removal of the geographical restriction will promote a more economical and efficient handling of the reserve milk supplies of the market. The witness for the proponent stated that the historical supply area and the location of balancing plant regularly associated with the market extend beyond the present geographical restricted area. This situation results in inefficiency and lower returns to producers because it does not permit multi-plant operators to supply the market's fluid milk needs from plants located closest to distributing plants.

With the rather far-reaching changes adopted herein for qualifying cooperative balancing plants, a geographical restriction should continue to apply to all plants qualifying as part of a pooling unit of balancing plants. This is essential to insure that adequate supplies of supply plant milk will continue to be made available when needed by the market's distributing plants. Otherwise, if no geographical limitation were provided, situations could arise where milk associated with a plant in a unit would not be available for the fluid segment of the market. This could undermine the effectiveness of the order in insuring an adequate supply of milk for fluid use within the market.

On the basis of this record, however, the present geographical restricted area should be modified to include the entire state of Michigan. This area is a reasonable one in which to restrict the location of plants qualifying as part of a unit since it would include all of the historical supply area for the market.

NFO's proposal that would modify the order's alternative performance requirement for a cooperative balancing plant based on a cooperative's deliveries to pool distributing plants during the preceding 12-month period ending with the current month should not be adopted. The present order provides also for an alternative performance standard for a cooperative balancing plant based on a cooperative's performance in supplying distributing plants over a 123-month period. However, the 12-month period used presently is based on the average proportion of deliveries to distributing plant during the second through the thirteenth preceding months.

The purpose of this alternative performance standard is to offset the potentially disruptive impact of short-run changes in marketing conditions that would adversely affect the pooling status of a cooperative balancing plant. Allowing a cooperative association this pooling flexibility adds stability to the market wherein it permits a cooperative significantly associated with the market to make adjustments in its operations so as to maintain pool status.

NFO's witness did not offer any substantive reasons for the modification in the 12-month moving average. Moreover, the record does not indicate that the present 12-month moving average is not serving its inended purpose. In the absence of any specific reason given for adopting the proposal and in view that there is no indication on the record that there currently exists a marketing problem with using the order's present 12-month moving average based on a cooperative's deliveries to distributing plants during the second through the thirteenth preceding month period, it is concluded that the proposal should not be adopted on the basis of this record.

4. *Diversion of producer milk.* (a) *Producer delivery requirement.* The producer delivery requirement (i.e. the "touch-base" requirement) of Order 40 should be relaxed. In this regard, one day's instead of two day's milk production of an individual producer should be required to be physically received at a pool plant during the month to qualify such producer's milk for diversion to nonpool plants. Also, this requirement should apply only during the six months of September through February instead of for each month as the order now provides.

NFO proposed that the order be revised in this manner and no one opposed these changes. NFO's witness stated that this change is needed because presently, many of NFO's

producers are delivering to pool plants more milk than is required solely to insure that all producers meet the minimum touch-base requirement for the month. He indicated that the milk of many of NFO's producers who are on an every-other-day pickup schedule is picked up on routes with the milk of producers who are on an everyday pickup schedule. This, he said, results in many producers delivering four day's production to pool plants, which is two days more production than is required. He stressed that this practice should be avoided. He added that adoption of NFO's proposal should reduce the administrative burden of the touch-base requirement in that a simple check of pool plant weight slips would verify whether or not producers have made their qualifying shipment.

In addition, NFO's witness testified that requiring a producer's milk to be physically received at a pool plant only in each of six months when the market's fluid needs are the greatest promotes a more efficient handling of the market's reserve milk supplies. He pointed out that presently, producers must touch-base even in months when no other delivery requirements apply merely to qualify. Therefore, he believes that the deliveries during non/critical months should cease.

The basic issue developed on the record is whether the present touch-base requirement causes reduced marketing efficiencies that necessitates its relaxation. The record evidence indicates that requiring two days' production of a producer to be physically delivered to pool plants in each month of the year does interfere with efficient milk marketing.

Presently, to comply with the touch-base requirement under Order 40 approximately 6.67 percent of each producer's milk, regardless of where they are located, is physically delivered to pool plants each month whether or not it is needed there. As stated on the record, many producers deliver four days' production or 13.13 percent of their milk simply so that other producers can meet the two days' or 6.67 percent delivery requirement. This scenario goes on during the milk-short months and during the flush months. Obviously, unnecessary shipments are being made.

The purpose of requiring individual producers to touch-base is to insure that they are genuinely associated with the fluid market. Thus, it is known that those producers with milk pooled on this market are capable of delivering approved Grade A milk to pool plants. This practice should be carried out without interferring with efficient marketing, yet, it should maintain the integrity of the order.

Therefore, the order, as amended herein, requires that at least one day's production of a producer be physically received at a pool plant during each of the months of September through February in order for any of that producer's milk to be eligible to be diverted to nonpool plants and remain pool milk. One day's production during each of the milk-short months is sufficient to demonstrate an association between producers and the market.

Relaxing the touch-base requirement also promotes a more efficient handling of reserve supplies by minimizing the number of necessary milk deliveries of individual producers. Therefore, during the September-February period the most milk any one producer would deliver due to the touch-base requirement would 6.67 percent (i.e. those on an every-other-day pickup schedule). This is an overshipment of only 3.33 percent of a producer's milk rather than 6.67 percent. In the flush months the reduction in deliveries resulting from the change in the touch-base requirement could be 13.33 percent of a producer's production (again, referring to those on an every-other-day pickup schedule).

In addition, with the number of required deliveries per producer minimized throughout the year, handlers who divert on an aggregate basis are afforded greater flexibility in pooling the milk of their producers. Because the changes adopted herein reduce the per producer deliveries in volume (from two to one day's production) and in frequency (from twelve to six months), handlers are able to develop more efficient shipping schedules. Therefore, the milk of those producers that can be most economically diverted, i.e. that of producers located closer to nonpool manufacturing outlets, will be diverted (in total during the flush months), while the milk of those producers located nearer to the market's center will be delivered to pool plants where needed.

(b) *Limitation on diversions to nonpool plants.* The period when there is a limitation of 60 percent on the amount of a handler's producer milk that may be diverted to nonpool plants should be changed from October through March to September through February. The milk base to which the limit applies should not be altered. Thus, for both cooperatives and operators of pool plants the milk base should continue to consist of the total quantity of producer milk for which they are the handler.

NFO proposed that the limitation on diversions of producer milk to nonpool plants apply during the September-February period rather than the October-March period. NFO also proposed that the quantity of milk to which the limit applies be restricted to only the physical receipts of a pool plant operator. Such a change was not proposed for cooperatives. In its brief, Kraft opposed NFO's proposed unequal treatment of proprietary handlers and cooperative handlers concerning the base to which the diversion percentage applies. In its own brief, NFP withdrew its support of this proposed change.

The proposal to change the period during which diversion limits apply should be adopted. It conforms with the changes previously adopted in this decision which would add September and delete March from the period for qualifying supply plants. The reasons stated in support of that change, i.e., the market's seasonal production patterns and variations in Class I utilization, and the fact that Class I demand begins to increase in September, are equally valid for permitting unlimited diversions during the March-August period.

The record, however, is void of any reason as to why the base to which the diversion limit applies should be larger for cooperatives than for pool plant operators. Proponent itself withdrew its support for this change. Therefore, in computing a pool plant operator's or a cooperative's diversion allowance, the based to which the diversion percentage applies for both handlers will still include the amount of producer milk physically received plus the amount diverted therefrom. Hence, both handlers will still be treated equally with respect to the percentage of their producer milk that they may divert to nonpool plants under the order.

(c) *Excess diversions to nonpool plants.* Prducer milk status should not be forfeited with respect to all milk diverted to nonpool plants by a handler if that handler fails to designate the dairy farmer deliveries which are ineligible to be producer milk due to milk being diverted in excess of the limit set forth in the order. Rather, the present order provisions which prescribe a specific procedure for excluding overdiverted milk from producer milk when a diverting handler does not designate whose milk shall not be producer milk should remain intact. Such procedure excludes milk diverted on the last day of the month first, then, in sequence, milk diverted on the second-to-last day and so on in daily allotments until all of the overdiverted milk is accounted for.

NFO proposed this revision and was the sole voice heard concerning this

issue. NFO's witness implied that this proposal would provide for similar application of such excess diversions among and between orders operating in the region.

No basis was given as to why this particular proposal should be adopted. In addition, neither at the hearing nor in post-hearing briefs was any indication given that the present method of treating nondesignated overdiversions was causing a problem in the market. Therefore, it is appropriate that the order still provide a procedure for determining with diversions shall not be considered producer milk when milk diverted to nonpool plants exceeds the diversion limits prescribed by the order. This procedure was adopted in order to clarify how to exclude nondesignated overdiverted milk. Simply excluding all milk diverted to nonpool plants when a handler fails to designate whose milk is ineligible as producer milk in case of overdiversion , as NFO proposed, would place a greater burden of financial risk on handler who diverts milk. For these reasons, NFO's proposal is denied.

5. *Expedited action.* The record evidence does not support the omisson of a recommended decision on those issues concerning classification and polling standards for supply plants.

On the record, and without prior notice, the Milk Foundation of Indiana requested that expedited action be taken on proposals 1, 2, and 3 as noted in the hearing notice involving the reclassification of skim milk and butterfat used to produce ice cream and related products for the three markets herein under consideration. Additionally, at the hearing MMPA requested that its proposal with respect to pooling standards for supply plants (issue 3) be, likewise, handled on an expedited basis.

The record evidence, however, with respect to issue 1 and 3 does not support omitting a recommended decision and the opportunity for interested persons to file comments and exceptions thereto. Therefore, all such requests for expedited action are denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decisions.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas and the minimum prices specified in the tentative marketing agreements and orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and orders, as hereby proposed to the be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order

Amending the Orders

The recommended marketing agreements for the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan marketing areas are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders for such marketing areas. The following order amending the orders, as amended, regulate the handling of milk in such marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1033, 1036, and 1040

Milk marketing orders, Milk, Dairy Products.

1. The authority citation for Parts 1033, 1036, and 1040 continues to read as follows:

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

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

2. Section 1033.41 is amended by revising paragraphs (b)(3) and (c)(1) to read as follows:

§ 1033.41 Classes of utilization

* * * * *

(b) * * *

(3) Used to produce yogurt, sour cream, sour mixtures (such as dips and dressings), cottage cheese, cottage cheese curd, pancake mixes, puddings, frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product; and

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, nonfat dry milk, dry whole milk, dry whey, dry buttermilk, buttermilk biscuit mixes, casein, cheese (except cottage cheese and cottage cheese curd), dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

3. Section 1036.15 is revised to read as follows:

§ 1036.15 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 20 percent total solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include those products and mixtures

listed in § 1036.40(b) (1) and (3), and (c)(1).

4. Section 1036.40 is amended by revising paragraphs (b)(3) and (c)(1) to read as follows:

§ 1036.40 Classes of utilization.

* * * * *

(b) * * *

(3) Used to produce eggnog, yogurt, sour cream, sour cream products (e.g., dips), cottage cheese, cottage cheese curd, frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product; and

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, any product containing six percent or more nonmilk fat (or oil), and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

* * * * *

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

5. Section 1040.40 is amended by revising paragraphs (b)(3), (c)(1)(ii), (c)(1)(iv), (c)(1)(v) and (c)(1)(vii) to read as follows:

§ 1040.40 Classes of utilization.

* * * * *

(b) * * *

(3) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts (including frozen yogurt), and frozen dessert mixes (including frozen yogurt mixes);

(iii) Any concentrated milk product in bulk, fluid form other than that used to produce a Class III product.

(c) * * *

(1) * * *

(ii) Butter, plastic cream, and anhydrous milkfat;

* * * * *

(iv) Any concentrated milk product in bulk, fluid form used to produce Class III products;

(v) Custards, puddings, pancake mixes, and buttermilk biscuit mixes;

* * * * *

(vii) Evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package;

* * * * *

6. In § 1040.7, the introductory text of paragraph (b) and paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) are revised, and a new paragraph (b)(6) is added to read as follows:

§ 1040.7 Pool plant.

* * * * *

(b) A supply plant which during the month meets one of the performance requirements specified in paragraph (b) (1), (2), (3) or (4) of this section. All supply plants which are operated by one handler, or all the supply plants for which a handler is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by both parties, may be considered as a unit for the purpose of meeting the performance requirements of paragraph (b) (1), (2), (3) or (4) of this section upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice and notice of any change in designation, shall be furnished on or before the fifth working day following the month to which the notice applies. In any months of March through August a unit shall not contain any plant which was not qualified under this paragraph either individually or as a member of a unit during the previous September through February.

(1) A supply plant from which each month not less than 30 percent of the total quantity of Grade A milk received at such plant from producers and from a handler described in § 1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in § 1040.9(b)) pursuant to § 1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant, is transferred to plants described in paragraph (b)(5) of this section. Not more than one-half of the shipping percentage specified in this paragraph may be met through the diversion of producer milk from the supply plant to pool distributing plants.

(2) A plant operated by a cooperative association which supplies distributing plants qualified under paragraph (a) of this section, if the amount of producer milk of members of the association delivered by transfer from such association's plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section is as follows:

(i) During the month, is not less than that percentage which is designated by the market administrator for the current month pursuant to paragraph (b)(6) of this section; or

(ii) During the second through thirteenth preceding months, was not less than that percentage which was designated by the market administrator for the second through thirteenth preceding months pursuant (b)6) of this section, if such plant was qualified under this paragraph in each of the preceding 13 months.

(3) A plant located in the State of Michigan which has been a pool plant for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(i) The Aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than that percentage designated by the market administrator for the current month pursuant to paragraph (b)(6) of this section; and

(ii) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (b)(5) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(4) A supply plant that qualifies as a pool plant pursuant to paragraph (b)(1), (2), or (3) of this section in each of the months of September through February shall be a pool plant for the following months of March through August. The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (b)(1) of this section on the basis of actual shipments therefrom. To requalify as a pool plant under paragraph (b)(2) or (3) of this section or on a unit basis, such plant must first have met the shipping

requirements of paragraph (b)(1) of this section for 6 consecutive months.

* * * * *

(6) The shipping percentage that applies to a handler described in paragraphs (b)(2) and (b)(3) of this section shall be determined in the following manner:

(i) The market administrator shall calculate the percentage that producer deliveries used in Class I represent of the total producer milk in that months' pool.

(ii) The following table shall be used in determining a cooperative's delivery requirement in qualifying its balancing plant or a unit of such plants as pool plants for the same month of the following year:

Producer deliveries used in Class I as a % of total producer milk	Applicable delivery percentage
Below 34.99	30
35–39.99	35
40–44.99	40
45–49.99	45
50 +	50

* * * * *

7. Section 1040.13 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1040.13 Producer milk.

* * * * *

(d) * * *

(1) During each of the months of September through February, not less than one day's production of a producer must be physically received at a pool plant;

(2) The total quantity of producer milk diverted by a cooperative association or by the operator of a pool plant may not exceed 60 percent during each of the months of September through February of the total quantity of producer milk for which it is the handler;

* * * * *

Signed at Washington, DC, on May 1, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87–10637 Filed 5–8–87; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 87–017]

Ports Designated for Exportation of Animals; Deletion of Alex Nichols Agency

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are amending the regulations on Inspection and Handling of Livestock for Exportation by deleting the Alex Nichols Agency, Glen Head, New York, from the list of ports that have export inspection facilities and are designated as ports of embarkation. This action is necessary because the facility is no longer in existence.

DATE: We will consider your comments if we receive them on or before July 10, 1987.

ADDRESSES: Submit comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that comments refer to Docket No. 87–017. Written responses may be inspected at Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: William Parham, Staff Veterinarian, Import-Export Emergency Planning Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations) prescribe conditions for exporting animals from the United States. Section 91.14(a) of the regulations lists ports having export inspection facilities that are designated as ports of embarkation. We are proposing to remove the Alex Nichols Agency, P.O. Box 283, Glen Head, New York, from this list because the facility no longer exists.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; 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 cause 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.

Because the Alex Nichols Agency facility at Glen Head, New York, does not exist, removing it from the list of ports of embarkation would have no effect on the exporters. Alternate ports of embarkation are available throughout other areas in New York.

Under these circumstances, 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.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

Executive Order 12372

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

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 would be amended as follows:

1. The authority citation for Part 91 would continue to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. In § 91.14, paragraph (a)(8)(ii)(B) of this section would be removed.

Done in Washington, DC, this 6th day of May, 1987.

William W. Buisch,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–10681 Filed 5–8–87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-41-AD]

Airworthiness Directives; Boeing Model 767 Airplanes Equipped With General Electric CF6 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with General Electric CF6 engines, which would require replacement of aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line. This proposal is prompted by reports of cracks extending through the width of the bracket, allowing the bracket flange and clamp to contact and wear the adjacent fuel line. This condition, if not corrected, could lead to penetration of the fuel line wall, creating a fuel leak.

DATE: Comments must be received no later than June 26, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-41-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Kurle, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1946. 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 (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-41-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion:

There have been approximately ten reports of hydraulic line bracket cracks in the engine struts of Model 767 airplanes equipped with General Electric CF6 engines. The cracks have found in the radius of the flange upon which the aluminum clamp is mounted. There have been two additional reports of cracks extending through the width of the bracket, allowing the flange and clamp to migrate and wear the adjacent fuel line. One line was sufficiently worn to penetrate the wall of the fuel line, creating a leak.

The FAA has reviewed and approved Boeing Service Bulletin 767-29-0032, dated January 15, 1987, which describes the replacement of aluminum brackets with inconel brackets, which are less susceptible to cracking, at three locations in each engine strut area.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the installation of inconel brackets in each engine strut area on certain Boeing Model 767 airplanes in accordance with the service bulletin previously mentioned.

It is estimated that 30 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,200.

For these reasons, 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 few, if any, Boeing Model 767 airplanes are operated by small entities. A copy of a craft 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 (14 CFR 39.13) as follows:

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

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

2. By adding the following new airworthiness directive:

Boeing:

Applies to Model 767 series airplanes, equipped with General Electric CF6 engines, listed in Boeing Service Bulletin 767-29-0032, dated January 15, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracking of the hydraulic pressure line aluminum support brackets in the engine strut, and possible fuel line penetration, accomplish the following:

A. Within the next 3,000 hours time in service after the effective date of this AD, replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line in accordance with Boeing Service Bulletin 757-29-0032, dated January 15, 1987, or later FAA-approved revision.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the 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 Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 1, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–10605 Filed 5–8–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–28–AD]

Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, which would require remarking the green band on the elevator trim control indicator on airplanes equipped with Pratt and Whitney PT6A–65R and PT6A–65AR engines, and rerigging the elevator tab on airplanes equipped with the PT6A–65AR engines. This proposal is prompted by reports of operational experience and further test flying that indicate that excessive control column force is required during takeoff. This condition, if not corrected, could lead to an unsafe out-of-trim condition.

DATE: Comments must be received no later than July 1, 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–28–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. 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–28–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe out-of-trim condition which exists on certain Short Brothers Model SD3–60 airplanes. Operational experience and additional flight tests indicate that Short Brothers Model SD3–60 airplanes equipped with Pratt and Whitney PT6A–65R and PT6A–65AR engines may require excessive control column force on takeoff.

Short Brothers issued Service Bulletin SD360–27–10, Revision 1, dated May 1986, which describes changes to the elevator trim green band on airplanes equipped with PT6A–65R engines, and Service Bulletin SD360–27–11, Revision 1, dated March 1986, which describes changes to the elevator trim green band and elevator tab rigging for airplanes equipped with PT6A–65AR engines. The CAA has classified both service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require remarking the green band on the elevator trim control indicator on Shorts Model SD3–60 airplanes equipped with Pratt and Whitney PT6A–65R and PT6A–65AR engines, and rerigging the elevator tab on airplanes equipped with the PT6A–65AR engines, in accordance with the service bulletins previously mentioned.

It is estimated that 53 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $12,720.

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 ($240). 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

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

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

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

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Model SD3-60 airplanes with Pratt and Whitney PT6A-65R and PT6A-65AR engines installed, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent an unsafe out-of-trim condition accomplish the following within 90 days after the effective date of this AD:

A. For airplanes equipped with Pratt and Whitney PT6A-65R engines, remark the green band on the elevator trim control indicator in accordance with the Accomplishment Instructions of Shorts Service Bulletin No. SD360-27-10, Revision 1, dated May 1986.

B. For airplanes equipped with Pratt and Whitney PT6A-65AR engines, remark the green band on the elevator trim control indicator and rerig the elevator tab in accordance with Accomplishment Instructions, of Shorts Service Bulletin No. SD360-27-11, Revision 1, dated March 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information 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 May 4, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-10606 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-29-AD]

Airworthiness Directives; Short Brothers PLC Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3-60 series airplanes, that would require sealing the fuselage to skin. This action is needed to prevent fuel leaks, should they occur in certain areas, from entering the main fuselage cabin.

DATE: Comments must be received no later than July 1, 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-29-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained form Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. 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 sumarizing 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-29-Ad, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Shorts Model SD3-60 airplanes. Following an incident of a fuel purge valve failure on a Shorts Model SD3-30 airplane, investigation revealed that, to safeguard against the potential for fuel ingress into the main cabin, an improvement in the sealing of the fuselage tip skin was necessary. The Shorts Model SD3-60 airplaines are of similar design and would also require an improved seal of the fuselage top skin to prevent fuel ingress into the main cabin.

Short Brothers issued Service Bulletin SD360-53-22, Revision 1, dated April 1986, which describes procedures for sealing the fuselage top skin on the Model SD3-60 airplanes. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdon and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require application of sealant to fuselage top skin in accordance with the previously mentioned service bulletin.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $39,600.

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 ($1200). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects: 14 CFR Part 39.

Aviation safety, Aircraft.

The Proposed Amendment

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

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

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

2. By adding the following new airworthiness directive:

Short Brothers PLC

Applies to Model SD3–60 airplanes, serial numbers SH3601 through SH3678, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure that failure of the fuel purge valve cannot result in the fuel ingress into the main cabin, accomplish the following:

A. Within 90 days after the effective date of this AD, apply sealant to the fuselage top skin in accordance with the "Accomplishment Instructions," of Shorts Service Bulletin SD360–53–22, Revision 1, dated April 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

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 information from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information 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 May 4, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–10607 Filed 5–8–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–33–AD]

Airworthiness Directives; Short Brothers PLC Model SD3–60 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3–60 series airplanes, that would require the installation of a new locking bolt for the nose landing gear shock absorber lower pin. This action is prompted by a recent report of a shock absorber lower pin working loose. This condition, if not corrected, could result in the loss of structural integrity of the nose landing gear.

DATE: Comments must be received no later than June 29, 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–33–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. 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 specific 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–33–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an incident where the nose landing gear shock absorber lower pin worked loose on a Shorts Model SD3–60 airplane. This condition, if not corrected, could result in the loss of structural integrity of the nose landing gear.

Short Brothers issued Service Bulletin SD360–32–20, dated May 1985, which describes a modification to the nose landing gear, to ensure retention of the shock absorber lower pin. The CAA classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the nost landing gear in accordance with the previously mentioned service bulletin.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour.

Based on these figures, the total cost impact of this Ad to U.S. operators is estimated to be $1,320.

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 ($40). 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

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

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

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

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Short Brothers PLC Model SD3-60 series airplanes, equipped with Dowty Rotol nose under carriage type nos. 200921001 or 200921003, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of structural integrity of the nose landing gear, as a result of a loose shock absorber lower pin, accomplish the following:

A. Within 90 days after the effective date of this AD, install a new locking bolt for the nose landing gear shock absorber pin accordance with the Accomplishment Instructions of Shorts Service Bulletin No. SD360-32-20, dated May 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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 proposal who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information 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 May 1, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-10608 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9190]

Ticor Title Insurance Co. et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Santa Ana, Calif.-based respondent, First American Title Insurance Co. from setting any rates for title search and examination and settlement services through any rating bureau in six states. Additionally, respondent has agreed to withdraw from the law suit filed by the title insurance companies named in the 1985 complaint. However, the respondent is also allowed to accept any final order or judgement which may be entered against any of the other insurance companies, instead of the consent agreement.

DATE: Comments must be received on or before July 10, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/S-2308, James C. Egan, Jr., Washington, DC 20580 (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act; 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b) (14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Title insurance, Trade practices.

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Ticor Title Insurance Co. a corporation, Chicago Title Insurance Co., a corporation, Safeco Title Insurance Co., a corporation, First American Title Insurance Co., a corporation, Lawyers Title Insurance Co., a corporation, and Stewart Title Guaranty Co., a corporation.

The agreement herein, by and between the signatory respondent hereto, hereinafter sometimes referred to as respondent, by its respective duty authorized officers, and its respective attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondent First American Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 114 East 5th Street, Santa Ana, California 92701.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violating section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charge.

3. Respondent admits all jurisdictional facts alleged in the complaint.

4. Respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto

publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the agreement may be used to vary or contradict the terms of the Order.

8. Respondent has read the complaint and Order contemplated hereby. It understands that once the terms of the Order become final, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Respondent further understands that it may be liable for civil penalties in the amount provided by the law for each violation of the Order after it becomes final.

9. In the event the Commission obtains a final order to cease and desist, resulting from litigation or consent, against any of the other respondents, or if the Commission or any court enters an order or judgment dismissing the complaint against any of the other respondents or which otherwise operates to permit the conduct to be enjoined hereunder, and that order or judgment becomes final, First American Title Insurance Company shall have the option to accept such order or judgment in lieu of the order contained in this consent agreement, provided that if the Commission serves upon respondent a copy of such order or judgment, respondents option to accept such order or judgment shall last only for a period of thirty (30) days thereafter. Delivery by the U.S. Postal Service of such order or judgment to respondent's address as stated in this agreement shall constitute service. If respondent exercises its option to accept such other order or judgment, it shall so notify the Commission within thirty (30) days. An order shall be considered final either by operation of law or by failure of any of the above companies to seek court review, or if court review is had as to said companies, at such time as court review is final as to all said companies.

10. As of the date this Order becomes final, respondent agrees to withdraw as one of the named parties in the proceeding entitled *Ticor Title Insurance Company, et al.* v. *Federal Trade Commission, et al.*, No. 86–5078, now pending before the United States Court of Appeals for the District of Columbia.

Order

I

For purposes of this Order, the following definition shall apply:

"Affected States" means the states of Arizona, Connecticut, Idaho, Montana, Ohio and Wisconsin.

II

It is ordered that respondent, its successors and assigns, and its officers, representatives, and employees, directly or indirectly, through any corporation, subsidiary, division or other device shall not discuss, propose, set, or file any rates for title search and examination services or settlement services through any rating bureau in any of the Affected States, unless respondent can establish that such state has clearly articulated and affirmatively expressed a policy permitting collective rate filing through rating bureaus, and actively supervises this conduct.

III

It is further ordered that respondent shall within thirty days after service of this Order deliver a copy of this Order to all its present officers, directors, and personnel having any responsibility in determining rates as well as to the commissioner of insurance in each of the Affected States.

IV

It is further ordered that respondent notify the Coammission at least thrity days prior to any change in the corporate respondent such as dissolutin, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

V

It is further ordered that respondent shall, within ninety days after the Order becomes final, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from First American Title Insurance Company (hereinafter "First American") which prohibits First American from setting any rates for title search and examination services or for settlement services through any rating bureau in six states. These states include Arizona, Connecticut, Idaho, Montana, Ohio and Wisconsin. This prohibition against price fixing through rating bureaus will not apply where First American can establish a state action defense.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

First American is a title insurance company that conducts business in forty-nine states and the District of Columbia through branch offices and title insurance agents. In January of 1985, the Federal Trade Commission issued a Complaint alleging that The First American and five other title insurance companies had agreed on the prices to be charged for title search and examination services and for settlement services through rating brueaus in various states, thereby restraining competiton in the sale of these services. The complaint defined "title search and examination services" as all activities which are designed to identify and descirbe the ownership of a particular parcel of real property as well as any other actual or potential rights to, encumbrances on, or interests in the property. The Complaint defined "settlement services" as those services

related to the closing of a real estate transaction, including but not limited to those services performed in connection with or in supervision of the execution, delivery or recording of transfer and lien documents, or the disbursement of funds. The Complaint alleged that title search and examination services and settlement services do not constitute the "business of insurance" within the meaning of the McCarran-Ferguson Act (15 U.S.C 1012(b)). The Complaint thus alleged that the respondent title insurance companies had violated section 5 of the Federal Trade Commission Act, as amemded (15 U.S.C. 45).

In the "Agreement Containing Consent Order To Cease And Desist," First American admits all jurisdictional facts alleged in the Complaint, including the Complaint's allegations that title search and examination services and settlement services are not the "business of insurance." The agreement permits First American in the future to accept any final order or judgment entered against any of the other respondent title insurance companies named in the Complaint instead of the proposed order contained in this agreement. First American also agrees to withdraw as a named party from the proceeding entitled *Ticor Title Insurance Company, et al.* v. *Federal Trade Commission, et al.*, No. 86–5078, as of the date the proposed order becomes final.

Paragraphs I and II of the proposed order prohibit First American from setting any rates for title search and examination services and settlement services through any rating bureau in Arizona, Connecticut, Idaho, Montana, Ohio and Wisconsin. This prohibition will not apply in a given state if First American can establish that such state has clearly articulated and affirmatively expressed a policy permitting collective rate filing through rating bureaus, and actively supervises this conduct.

Paragraph III of the proposed order requires First American to deliver a copy of the order to various company officials as well as to state commissiners of insurance.

Paragraphs IV and V require First American to notify the Commission if it changes its corporate structure and to file a written report with the Commission ninety (90) days after the proposed order becomes final.

This agreement is for purposes of settlement only and does not constitute an admission by First American that the law has been violated as alleged in the Complaint.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 87–10632 Filed 5–8–87; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Abandoned Mine Land Reclamation Program

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

ACTION: Proposed rule.

SUMMARY: On February 3, 1987, the Commonwealth of Virginia submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Virginia Plan). The amendment pertains to implementation of new regulations, a reorganization in State government and agency structure, and changes in the procedures for reclamation project ranking and selection and for public participation. In addition, Virginia is proposing to assume responsibility for administering an emergency reclamation program and has submitted an amendment to the Virginia Plan outlining the procedures for administration of such a program. This notice sets forth the times and locations that the Virginia Plan and proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding a public hearing.

DATES: .

Written comments: OSMRE will accept written comments on the proposed rule until 4:00 p.m. on June 10, 1987. Comments received after that date will not necessarily be considered in the decision process.

Public hearing: A public hearing on the proposed Virginia Plan amendments has been scheduled for 1:00 p.m. on June 1, 1987. Any person interested in making an oral or written presentation at the hearing should contact Mr. William Thomas at the OSMRE Big Stone Gap Field Office by 4:00 p.m. on May 26, 1987. If no one has so contacted Mr. Thomas, a meeting rather than a hearing may be held. A summary report of the meeting will be included in the Administrative Record.

ADDRESSES: The hearing will be held in the conference room of the Big Stone Gap Field Office of the OSMRE, 2nd floor, Powell Valley Square Shopping Center, Big Stone Gap, Virginia.

Written comments and requests for a hearing should be mailed to: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219.

Copies of the Virginia Plan, the proposed changes to the plan, and the administrative record of the Virginia Plan are available for public review and copying at the OSMRE Offices and the State regulatory authority office listed below Monday through Friday, 9:00 a.m. to 4:00 p.m. excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

Office of Surface Mining Reclamation and Enforcement, Division of Abandoned Mine Lands, 1100 L Street NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343–7910.

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone: (703) 523–2925.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia AMLR program on December 15, 1981. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the December 15, 1981 **Federal Register** Notice (46 FR 61085–61115).

Information concerning the previously approved plan and the proposed amendments may be obtained from the

agency offices listed under "ADDRESSES."

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

II. Discussion of Proposed Amendment

By letter dated February 3, 1987, Virginia submitted a reclamation plan amendment to OSMRE (Administrative Record No. VA 593). The proposed amendment consists of revised narratives to replace several sections of the approved Virginia Plan as provided for by 30 CFR 884.13. Specifically, the following areas of the plan are being revised.

(1) Organization (30 CFR 884.13(d) (1) & (2)): Virginia is proposing to update certain portions of its AMLR plan to reflect changes that have occurred in the State government and agency structure. The State has also submitted additional material that outlines the administration of a proposed State emergency reclamation program and the procedures for coordinating with OSMRE.

(2) Project selection (30 CFR 884.13(c)(2)): Virginia has submitted revised project scoring criteria to insure that projects involving threats to the public health and safety are addressed before lower priority problems. Section 403 of the Surface Mining Act, 30 U.S.C. 1233, provides that expenditures from the AML fund on eligible lands and waters reflect certain stated priorities. The first two priorities concern the protection of the public health, safety and general welfare.

(3) Reclamation on private land (30 CFR 884.13(c)(5)): Virginia has submitted revised procedures for conducting appraisals on eligible AML lands. These changes reflect similar changes made in the Federal (47 FR 28574–28604) requirements. In addition the State has submitted updated procedures and forms for implementing the lien requirements in 30 CFR 882.13.

(4) Rights of entry (30 CFR 884.13(c)(6)): The State has submitted new right of entry forms to be used during its reclamation efforts and has provided additional material concerning the non-consensual entry notice requirements specified in 30 CFR 877.13(c).

(5) Public participation (30 CFR 884.13(c)(7)): The State has proposed amending its public participation procedures by requiring a public hearing on proposed State AML grants at the State's Division of Abandoned Mine Lands office in Big Stone Gap, Virginia, rather than at every "A–95" clearinghouse agency location. The State has also proposed deleting requirements regarding specific meeting dates for its Abandoned Mine Land Advisory Committee in favor of a more flexible and workable schedule.

(6) State emergency reclamation activities: On September 19, 1983, OSMRE informed the States and Tribes of the opportunity to amend their reclamation plans to include responsibility for administering emergency response reclamation activities (47 FR 42729–42730). For a State to undertake such activities as part of its reclamation program, it must demonstrate that it has the statutory authority to administer emergency reclamation activities, the technical capabilities to design and supervise emergency response work and the appropriate procurement procedures to quickly respond to emergencies either directly or through contractors. The Commonwealth of Virginia has submitted material demonstrating compliance with these requirements.

OSMRE is seeking comments on the adequacy of the Virginia proposed amendments as set forth in 30 CFR 884.15, and whether the criteria for assumption of emergency response activities specified in 47 FR 42729–42730 (September 19, 1983), have been satisfied. If approved, the amendments would become part of the Virginia Abandoned Mine Land Reclamation Plan.

III. Procedural Matters

1. Federal 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 *et seq.*

2. Executive Order No. 12291 and the Regulatory Flexibility Act: On October 4, 1985, 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 disapproval of State reclamation plans or amendments. 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.*). No burden would be imposed upon entities operating in compliance with the Act.

3. Compliance with the National Environmental Policy Act: Approval of State AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 2, p. B–1.

4. **Author:** The principal author of this rule is Mr. Fred Sherby, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

List of Subjects in 30 CFR Part 946

Abandoned mine land reclamation plan amendments.

Dated: April 27, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 87–10597 Filed 5–8–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 226

[DoD Instruction 4165.65]

Shelter for the Homeless Program; Proposed Implementation

ACTION: Proposed rule.

SUMMARY: The Department of Defense proposes to issue rules to implement the Department of Defense Shelter for the Homeless Program authorized by section 2546 of title 10, United States Code. The intended effect of this rule is to provide specific guidance to the heads of Department of Defense Components and Installation Commanders as to the actions they may take to provide shelter and incidental services to persons without adequate shelter.

DATE: Comments should be received on or before June 10, 1987.

ADDRESS: Written comments and opinions on this proposed rule should be sent to Steve Kleiman, Assistant to the Director for Installation Assistance, Office of the Deputy Assistant Secretary of Defense (Installations), Room 3D812, The Pentagon, Washington, DC 20301–8000.

FOR FURTHER INFORMATION CONTACT: Steve Kleiman, Assistant to the Director for Installation Assistance, Office of the Deputy Assistant Secretary of Defense (Installations), Room 3D812, The Pentagon, Washington, DC 20301–800, Telephone (202) 697–7475.

List of Subjects in 32 CFR Part 226

Housing, Military installations.

Accordingly, Part 226 of Title 32 is proposed to be added to read as follows:

PART 226—SHELTER FOR THE HOMELESS PROGRAM

Sec.
226.1 Purpose.
226.2 Applicability and scope.
226.3 Policy.
226.4 Responsibilities.
226.5 Procedures.
226.6 Implementation.

Authority: 10 U.S.C. 2546.

§ 226.1 Purpose.

This Part implements 10 U.S.C. 2546 by establishing Department of Defense policy for the Department of Defense Shelter for the Homeless Program.

§ 226.2 Applicability and scope.

The provisions of this part apply to the Office of the Secretary of Defense (OSD) and its field activities, the Military Departments (including their National Guard and reserve components), the Unified and Specified Commands, and the Defense Agencies (hereafter called "Department of Defense Components").

§ 226.3 Policy.

(a) By Memorandum for the Secretaries of the Military Departments dated October 29, 1984, and entitled: "Shelter for the Homeless", the Secretary of Defense stated that it is Department of Defense policy to provide shelter for the homeless on military installations when the provision of such shelter does not interfere with military preparedness or ongoing military operations.

(b) The Secretary of a Military Department may make facilities at military installations under his jurisdiction available for the furnishing of shelter to persons without adequate shelter in accordance with 10 U.S.C. 2546 and this part.

(c) Shelters for the Homeless shall be developed in cooperation with appropriate State or local governmental entities and charitable organizations. The State or local government entity, either separately or in conjunction with a charitable organization, shall be responsible for operating and staffing any shelter established under the Shelter for the Homeless Program.

(d) Services that may be provided by a Military Department incident to the furnishing of shelter under 10 U.S.C. 2546 are the following:

(1) Utilities.
(2) Bedding.
(3) Security.
(4) Transportation.
(5) Renovation of facilities.
(6) Minor repairs undertaken specifically to make suitable space available for shelter to be provided under this part.
(7) Property liability insurance.

(e) Shelter and incidental services may only be provided under this part to the extent that the Secretary of a Military Department, or the Senior Manager appointed under § 226.4(b)(2) of this part, determine that the establishment of a shelter on a military installation will not interfere with military preparedness or ongoing military functions.

(f) To preclude interference with military preparedness or ongoing military functions, shelters for the homeless shall not be established adjacent to, or in close proximity to the following:

(1) Family Housing areas.
(2) Troop Billeting areas.
(3) Service Facilities such as Commissaries, Exchanges, Dining Facilities, Hospitals, Clinics, Recreation Centers, etc.
(4) Firing Ranges and Impact Areas.
(5) Frequently used Training areas.

(g) Shelters for the homeless will normally be established in only those facilities where the homeless will have exclusive use at all times. Shelters for the homeless will normally not be established in facilities "shared" with military functions.

(h) In addition to providing shelter and incidental services, Department of Defense Components may provide bedding for support of shelters for the homeless that are located on other than Department of Defense real property. Bedding may be provided without reimbursement, but may only be provided to the extent that the provision of such bedding will not interfere with military requirements.

§ 226.4 Responsibilities.

(a) *The Deputy Assistant Secretary of Defense (Installations)* shall:

(1) Administer the Shelter for the Homeless program and issue such supplemental guidance as is necessary.

(2) Appoint an individual (Assistant to the Director, Installation Assistance) who shall be the Department of Defense program manager responsible for monitoring the Shelter for the Homeless program and answering all inquiries.

(b) *The Secretaries of the Military Departments* shall:

(1) Implement the Shelter for the Homeless program.

(2) Appoint a senior manager to monitor the Shelter for the Homeless program within that Department and to provide any assistance that may be required to the Deputy Assistant Secretary of Defense (Installations). Such official, after consultation with the Assistant to the Director, Installation Assistance ODASD(I), shall approve or disapprove all requests to establish a Shelter for the Homeless under 10 U.S.C. 2546 and this part.

(3) Ensure that each Installation Commander is informed about the program and the types of assistance that they may provide as authorized by 10 U.S.C. 2546 and this part.

(c) *Department of Defense Installation Commanders* shall:

(1) Respond to all requests for assistance.

(2) Upon receipt of a request, initiate such action as is necessary to determine the availability of facilities at that installation for use as a shelter for the homeless.

(3) Forward each request, through the chain of command, to the Service Senior Manager with a copy to the DASD(I). The Installation Commander's recommendation will accompany each request.

§ 226.5 Procedures.

(a) When a Department of Defense Component receives a request for assistance, that request shall be transmitted to the Deputy Assistant Secretary of Defense (Installations).

(b) The Head of a Department of Defense Component, or his designee, will in coordination with the Deputy Assistant Secretary of Defense (Installations), determine the extent of assistance that may be provided consistent with 10 U.S.C. 2546 and this part.

§ 226.6 Implementation.

Forward one copy of implementing documents to the Deputy Assistant Secretary of Defense (Installations) within 60 days.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 1, 1987.

[FR Doc. 87–10317 Filed 5–8–87; 8:45 am]

BILLING CODE 3810–01–M

VETERANS ADMINISTRATION

38 CFR Part 4

Evaluation of Hearing Loss

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to amend the Schedule for Rating Disabilities (38 CFR Part 4) to implement a new method for evaluating the degree of disability attributable to hearing loss. These amendments are necessary because of new testing methods which place greater emphasis on decibel loss and speech discrimination in higher frequency ranges. The effect of these amendments will be to provide more accurate measurement of hearing impairment and increased compensation to hearing disabled veterans.

DATES: Comments must be received on or before July 9, 1987. This amendment is proposed to be effective 30 days after publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 21, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The current hearing impairment segment of the Schedule for Rating Disabilities (39 CFR 4.85 through 4.87a) and the current examination procedure for measuring hearing loss have been in existence for the past 30 years with no substantive change. Under the current systems two alternative methods are used to evaluate hearing loss.

Puretone averaging. Tone bursts at 500, 1000 and 2000 Hz are currently used to measure the decibel loss at each of those three frequencies in each ear. The average decibel loss for each ear becomes the basis of the assignable evaluation. The greater the average decibel loss, the higher the evaluation.

Speech discrimination. A list of two-syllable words presented through earphones is used to determine the ability of the veteran to distinguish spoken words. The number of words that can be identified as compared to the total number of words listed is referred to as the percentage of discrimination. The more words unidentified (the lower the percentage of discrimination), the higher the evaluation.

During a routine VA hearing loss examination, the examiner normally conducts both tests. The Chief of the Audiology clinic will certify on the examination report which of the two tests more accurately reflects the true hearing loss.

Acknowledging the many advances in hearing loss testing and improvement in hearing aid devices and further realizing that very little change was made to the rating and examination protocols by the VA during the past 30 years, Congress requested that the VA conduct a study on testing methods and assistive devices for hearing impairment. On January 6, 1986, the VA issued its "Report on Hearing Loss Study."

Among other things, the study report made two recommendations concerning testing methods that required significant changes in the Schedule for Rating Disabilities. In order to recognize the impact of hearing loss in higher frequencies and provide a more accurate picture of true hearing impairment, the report recommended that puretone averaging be accomplished using tone bursts at 1000, 2000, 3000 and 4000 Hz. It also recommended that speech discrimination be measured using the Maryland CNC word lists which contain words with sounds in the 3000 and 4000 Hz range. These two significant changes in testing parameters required complete revision of the current method for evaluating degree of disability.

The Department of Veterans Benefits, in consultation with the Department of Medicine and Surgery, has developed amendments to 38 CFR 4.85, 4.86a, 4.87a and Tables VI and VII of 4.87 to implement a revised schedule for rating hearing impairments based on the recommended changes in testing methods. The new schedule provides for evaluating hearing loss based on a combination of puretone averages and speech discrimination. This provides for a more accurate representation of actual hearing impairment by recognizing that individuals with slight to moderate decibel loss as determined by puretone averaging may have significant impairment in speech discrimination and vice versa. For cases in which there are language difficulties or other factors such as education, social background and medical conditions which produce inconsistent speech audiometry scores, a separate evaluation table based solely on puretone averages is provided.

The new rating schedule for hearing loss also provides for eleven separate evaluations in 10% increments from 0% to 100%. This provides a logiclly graduated scale for disability evaluation and recognizes that profound deafness may be totally disabling. Conforming amendments are also being made to Appendices, A, B and C of 38 CFR Part 4.

The Administrator hereby certifies that this regulatory amendment will not have a significant ecomonic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprices in domestic or export markets.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.)

Approved: September 12, 1986.

Thomas K. Turnage,

Administrator.

PART 4—[AMENDED]

38 CFR, Part 4, Schedule for Rating Disabilities, is proposed to be amended as follows:

1. Section 4.85 is revised to read as follows:

§ 4.85 Evaluation of hearing impairment.

(a) Examinations are conducted using the controlled speech discrimination tests together with the results of the puretone audiometry test. The horizontal lines in table VI represent nine categories of prercent of discrimination based on the controlled

speech discrimination test. The vertical columns in table VI represent nine categories of decibel loss based on the puretone audiometry test. The numeric designation of impaired efficiency (I through XI) will be determined for each ear by intersecting the horizontal row appropriate for the percentage of discrimination and the vertical column appropriate to puretone decibel loss; thus with percent of discrimination of 70 and average puretone decibel loss of 64, the numeric designation is V for one ear. The same procedure will be followed for the other ear.

(b) The percentage evaluation will be found from table VII by intersecting the horizontal row appropriate for the numeric designation for the ear having the better hearing and the vertical column appropriate to the numeric designation for the ear having the poorer hearing. For example, if the better ear has a numeric designation of "V" and the poorer ear has a numeric designation of "VII," the percentage evaluation is 30 percent and the diagnostic code is 6103.

(c) Table VIa provides numeric designations based solely on puretone averages an is for application *only* when the Chief of the Audiology Clinic certifies that language difficulties or inconsistent speech audiometry scores make the use of both puretone average and speech discrimination inappropriate. (38 U.S.C. 355)

2. Section 4.86a is revised to read as follows:

§ 4.86a Evidence other than puretone audiometry and controlled speech.

When claims are encountered in which the medical evidence necessary to establish service-connection for hearing loss predates the use of puretone audiometry and controlled speech, service-connection will be determined under the provisions of 38 CFR 4.85 through 4.87a as in effect on (the day preceding the effective date of this change). (38 U.S.C. 355)

3. Part 4 is amended by revising table VI and table VII and by adding table VIa to read as follows:

* * * * *

BILLING CODE 3510-22-M

TABLE VI

Numeric Designation of Hearing Impairment

PERCENT OF DISCRIMINATION	Average Puretone Decibel Loss								
	0-41	42-49	50-57	58-65	66-73	74-81	82-89	90-97	98+
92-100	I	I	I	II	II	II	III	III	IV
84-90	II	II	II	III	III	III	IV	IV	IV
76-82	III	III	IV	IV	IV	V	V	V	V
68-74	IV	IV	V	V	VI	VI	VII	VII	VII
60-66	V	V	VI	VI	VII	VII	VIII	VIII	VIII
52-58	VI	VI	VII	VII	VIII	VIII	VIII	VIII	IX
44-50	VII	VII	VIII	VIII	VIII	IX	IX	IX	X
36-42	VIII	VIII	VIII	IX	IX	IX	X	X	X
0-34	IX	X	XI	XI	XI	XI	XI	XI	XI

TABLE VIa*

Average Puretone Decibel Loss

0-41	42-48	49-55	56-62	63-69	70-76	77-83	84-90	91-97	98-104	105+
I	II	III	IV	V	VI	VII	VIII	IX	X	XI

Numeric Designation

* This table is for use only as specified in 4.85(c).

TABLE VII

Percentage Evaluations for Hearing Impairment
(with diagnostic codes)

BETTER EAR \ POORER EAR	XI	X	IX	VIII	VII	VI	V	IV	III	II	I
XI	100* (6110)										
X	90 (6109)	80 (6108)									
IX	80 (6108)	70 (6107)	60 (6106)								
VIII	70 (6107)	60 (6106)	50 (6105)	50 (6105)							
VII	60 (6106)	60 (6106)	50 (6105)	40 (6104)	40 (6104)						
VI	50 (6105)	50 (6105)	40 (6104)	40 (6104)	30 (6103)	30 (6103)					
V	40 (6104)	40 (6104)	40 (6104)	30 (6103)	30 (6103)	20 (6102)	20 (6102)				
IV	30 (6103)	30 (6103)	30 (6103)	20 (6102)	20 (6102)	20 (6102)	10 (6101)	10 (6101)			
III	20 (6102)	20 (6102)	20 (6102)	20 (6102)	20 (6102)	10 (6101)	10 (6101)	10 (6101)	0 (6100)		
II	10 (6101)	10 (6101)	10 (6101)	10 (6101)	10 (6101)	10 (6101)	10 (6101)	0 (6100)	0 (6100)	0 (6100)	
I	10 (6101)	10 (6101)	0 (6100)	0 (6100)	0 (6100)	0 (6100)	0 (6100)	0 (6100)	0 (6100)	0 (6100)	0 (6100)

* Entitled to special monthly compensation under 38 CFR 3.350(a) (38 U.S.C. 314(k)).

BILLING CODE 3510-22-C

§ 4.87a [Removed]

4. Section 4.87a is removed.

5. Appendix A—Table of Amendments and Effective Dates Since 1946 is revised to read as follows:

APPENDIX A—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

Sec.	
	Diagnostic Code 5055; September 9, 1975.
	Diagnostic Code 5056;
	Diagnostic Code 5164—60 percent; June 9, 1952.
	Diagnostic Code 5172; July 6, 1950.
	Diagnostic Code 5173; June 9, 1952.
	Diagnostic Code 5255 "or hip"; July 6, 1950.
	Diagnostic Code 5257—Evaluation; July 6, 1950.
	Diagnostic Code 5297—(Removal of one rib) "or resection of 2 or more"; August 23, 1948.
	Diagnostic Code 5297—NOTE (2): Reference to lobectomy; pneumonectomy and graduated ratings; February 1, 1962.
	Diagnostic Code 5298; August 23, 1948.
4.73	Diagnostic Code 5324; February 1, 1962.
	Diagnostic Code 5327; March 10, 1976.
	Diagnostic Code 5328; March 10, 1976.
4.78	Last sentence; December 1, 1963.
4.84a	Diagnostic Code 6029—Note; August 23, 1948.
	Diagnostic Code 6035; September 9, 1975.
	Diagnostic Code 6076—60%: Vision 1 eye 15/200 and other eye 20/100; August 23, 1948.
	Diagnostic Code 6060—Note—"as to 38 U.S.C. 314(L)"; July 6, 1950.
	Diagnostic Code 6081—Words "unilateral", "minimal" and all of Note; March 10,1976.
4.84b	Diagnostic Code 6260—As to tinnitus due to arteriosclerosis.
	DC 8046; October 1, 1961.
	10% Evaluation and Criterion; March 10, 1976.
4.85	March 23, 1956. (Effective date of this change.)
4.86	March 23, 1956.
4.86a	March 23, 1956. (Effective date of this change.)
4.87	Tables VI and VII replaced by new Tables VI, VIa and VII (Effective date of this change.)
4.87a	Diagnostic Codes 6277 through 6297; March 23, 1956. Deleted (effective date of this change.)
4.88a	Diagnostic Code 6304—Notes (1) and (2); August 23, 1948.
	Diagnostic Code 6309; March 1, 1963.
	Diagnostic Code 6350; 80% Evaluation and Criterion for 60% and 30% Evaluations; March 10, 1976. Other Evaluations and Note; March 1, 1963.
4.89	Ratings for nonpulmonary TB; December 1, 1949.
4.97	Diagnostic Code 6600—100% Evaluations and Criteria for 60%; September 9, 1975.
	Diagnostic Code 6602—Criteria for all Evaluations and Note; September 9, 1975.
	Diagnostic Code 6603; September 9, 1975.
	Second note following Diagnostic Code 6724; December 1, 1949.
	Diagnostic Code 6802—Criteria for all Evaluations; September 9, 1975.
	Diagnostic Code 6819—Note; March 10, 1976.
	Diagnostic Code 6821—Evaluations and Note; August 23, 1948.
4.104	Diagnostic Code 7000—30 percent; July 6, 1950.
	Diagnostic Code 7000—100 percent inactive "with signs of congestive failure upon any exertion beyond rest in bed" revoked;
	Diagnostic Code 7005—80 percent revoked;
	Diagnostic Code 7007—80 percent revoked;
	Diagnostic Code 7015—100 percent Evaluations. Criteria for All Evaluations and Notes (1) and (2): September 9, 1975.
	Diagnostic Code 7017;
	Diagnostic Code 7100—20 percent; July 6, 1950.
	Diagnostic Code 7101—"or more"; September 1, 1960.
	Diagnostic Code 7101—Note (2); September 9, 1975.
	Diagnostic Code 7110—Criteria for 100 percent, Note and 60 percent and 20 percent Evaluations; September 9, 1975.
	Diagnostic Code 7111—Note; September 9, 1975.
	Diagnostic Code 7114, 7115, 7116, and Note; June 9, 1952.
	Diagnostic Code 7117 and Note; June 9, 1952.
	Note following Diagnostic Code 7120; July 6, 1950.
	Diagnostic Code 7121—100 percent Criterion and Evaluation and 60 percent Criterion; March 10, 1976. Criteria for 30 percent and 10 percent and Note: July 6, 1950.
	Last sentence of Note following Diagnostic Code 7122; July 6, 1950.
4.114	Diagnostic Code 7304 and 7305—Evaluations; November 1, 1962.
	Diagnostic Code 7308—Evaluations; April 8, 1959.
	Diagnostic Code 7312—70% Evaluation and 50% Evaluation and Criterion; March 10, 1976.
	Diagnostic Code 7313—20% Evaluation; March 10, 1976.
	Diagnostic Code 7319—Evaluations; November 1, 1962.
	Diagnostic Code 7321—Evaluations and Note; July 6, 1950.
	Diagnostic Code 7328—Evaluations and Note; November 1, 1962.
	Diagnostic Code 7329—Evaluations and Note; November 1, 1962.
	Diagnostic Code 7330—60% Evaluation; November 1, 1962.
	Diagnostic Code 7332—60% Evaluation; November 1, 1962.
	Diagnostic Code 7334—50% and 30% Evaluations; July 6, 1950.
	Diagnostic Code 7334—10% Evaluation; November 1, 1962.
	Diagnostic Code 7339—Criterion for 20% Evaluation; March 10, 1976.
	Diagnostic Code 7343—Note; March 10, 1976.
	Diagnostic Code 7345—100%, 60% and 30% Evaluations; August 23, 1948.
	Diagnostic Code 7345—10% Evaluation; February 17, 1955.
	Diagnostic Code 7345—10% Evaluation; February 17, 1955.
	Diagnostic Code 7346—Evaluations; February 1, 1962.
	Diagnostic Code 7347; September 9, 1975
	Diagnostic Code 7348; March 10, 1976.
	Diagnostic Code 7500—Note; July 6, 1950.
	Diagnostic Code 7519—20%, 40% and 60% Evaluations; March 10, 1976.
	Diagnostic Code 7524—Note: July 6, 1950.
	Diagnostic Code 7528—Note; March 10, 1976
	Diagnostic Code 7530; September 9, 1975.
	Diagnostic Code 7531; September 9, 1975.
	Diagnostic Code 7627—Note; March 10, 1976
	Diagnostic Code 7703—Evaluations; August 23, 1948.
	Diagnostic Code 7709—Note; March 10, 1976 Evaluations; June 9, 1952.
	Diagnostic Code 7714; September 9, 1975.
	Diagnostic Code 7801—Note (2); July 6, 1950.
	Diagnostic Code 7804—Note; July 6, 1950.

6. Appendix B—Numerical Index of Disabilities is revised to read as follows:

APPENDIX B—NUMERICAL INDEX OF DISABILITIES

[Acute, subacute, or chronic diseases]

Diagnostic Code No.	
6079	One eye only.
6080	Field vision, impairment of.
6081	Scotoma, pathological.
6090	Muscle function, ocular, impairment of.
6091	Symblepharon.
6092	Diplopia, due to limited muscle function.
	IMPAIRMENT OF AUDITORY ACUITY
6100	0% evaluation based on Table VII.
6101	10% evaluation based on Table VII.
6102	20% evaluation based on Table VII.
6103	30% evaluation based on Table VII.
6104	40% evaluation based on Table VII.
6105	50% evaluation based on Table VII.
6106	60% evaluation based on Table VII.
6107	70% evaluation based on Table VII.
6108	80% evaluation based on Table VII.
6109	90% evaluation based on Table VII.
6110	100% evaluation based on Table VII.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[Acute, subacute, or chronic diseases]

Diagnostic Code No.	
	DISEASES OF THE EAR
6200	Otitis media, suppurative, chronic.
6201	Otitis media, catarrhal, chronic.
6202	Otosclerosis.
6203	Otitis interna.
6204	Labyrinthitis.
6205	Meniere's syndrome.
6206	Mastoiditis.
6207	Auricle, loss or deformity.
6208	New growths, malignant, ear.
6209	New growths, benign, ear.
6210	Auditory canal, disease of.
6211	Tympanic membrane, perforation of.
6260	Tinnitus.
	OTHER SENSE ORGANS
6275	Smell, loss of sense of.
6276	Taste, loss of sense of.
	SYSTEMIC DISEASES
6300	Cholera, Asiatic.
6301	Kala-azar (visceral leishmaniasis).
6302	Leprosy.
6304	Malaria.
6305	Filariasis.
6306	Oroya fever.
6307	Plague.
6308	Relapsing fever.
6309	Rheumatic fever.
6310	Syphilis, unspecified.
6311	Tuberculosis, military.
6313	Avitaminosis.
6314	Beriberi.
6315	Pellagra.
6316	Brucellosis (Malta or undulant fever).
6317	Typhus, scrub.
6350	Lupus Erythematosus, systemic.
	RESPIRATORY SYSTEM
	THE NOSE AND THROAT
6501	Rhinitis, atrophic, chronic.
6502	Septum, nasal, deflection of.
6504	Nose, loss of part of, or scars.
6510	Sinusitis, pansinusitis, chronic.
6511	Sinusitis, ethmoid, chronic.
6512	Sinusitis, frontal, chronic.
6513	Sinusitis, maxillary, chronic.
6514	Sinusitis, sphenoid, chronic.
6515	Laryngitis, tuberculous.
6516	Laryngitis, chronic.
6517	Larynx, injuries of, healed.
6518	Laryngectomy.
6519	Aphonia, organic.
6520	Larynx, stenosis of.
	THE TRACHEA AND BRONCHI
6600	Bronchitis, chronic.
6601	Bronchiectasis.
6602	Asthma, bronchial.
	THE LUNGS AND PLEURA
6701	Tuberculosis, pulmonary, chronic, far advanced, active.
6702	Tuberculosis, pulmonary, chronic, moderately advanced, active.
6703	Tuberculosis, pulmonary, chronic, minimal, active.
6704	Tuberculosis, pulmonary, chronic, active, advancement unspecified.
6707	Tuberculosis, pulmonary, chronic, far advanced, active.
6708	Tuberculosis, pulmonary, chronic, moderately advanced, active.
6709	Tuberculosis, pulmonary, chronic, minimal, active.

[FR Doc. 87-10514 Filed 5-8-87; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket No. 87-107; FCC 87-117]

Radio Frequency Devices; Amendment of Commission Rules Concerning Input Selector Switches Used in Conjunction With Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This action initiates a rule making proceeding to consider requiring input selector switches used to alternate between cable and broadcast service to comply with the technical performance standards in § 15.606(a) of the Commission's rules.

DATES: Comments are due June 10, 1987; reply comments are due June 25, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: May Farber, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* in Gen. Docket No. 87-107, adopted April 8, 1987, and released May 11, 1987.

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

Summary of the Notice of Proposed Rulemaking

1. In the *Memorandum Opinion and Order* in the cable must carry proceeding, MM Docket No. 85-349 *(Memorandum Opinion and Order)*, adopted March 26, 1987, FCC 87-105, the Commission considered petitions for reconsideration of the two-part regulatory program adopted to resolve the cable signal carriage matter. In that decision, the Commission indicated that several parties requested reconsideration of its decision in the *Report and Order* in MM Docket No. 85-349 (51 FR 44606, December 11, 1986) to require that all input selector devices installed to provide switching between a cable television system and an antenna for reception of off-the-air broadcast television signals comply with the technical standards for TV interface device internal transfer switches in § 15.606(a) of the rules. The petitioners claimed that the technical standards in § 15.606(a) are inadequate to prevent significant signal reradiation which is incompatible with the maintenance of a clean RF environment for off-the-air TV reception and with the Commission's policy of protecting aeronautical navigation and communications frequencies.

2. In the *Memorandum Opinion and Order*, the Commission recognized petitioners' concerns and, based on the record of the must carry proceeding, stated its belief that the important nature of this issue warrants the provision of additional opportunity for interested parties to comment. It therefore vacated the requirement that input selector switches used to alternate between cable and broadcast service comply with § 15.606(a) of its Rules and directed its staff to prepare a *Notice of Proposed Rule Making (Notice)* to consider the issue of technical standards for such devices.

3. In the *Notice*, the Commission proposes to amend § 15.606 of its Rules to provide that an external, stand-alone transfer switch used with a TV receiver or TV interface device and in conjunction with cable service shall comply with the technical requirements of paragraph (a) of that section. If adopted, the rules also would provide that compliance of stand-alone devices with these standards shall be considered satisfactory if it is demonstrated that the switch isolation exceeds 60 dB. Since such switches will be employed with a variety of different signal sources, comment is invited on the frequency range over which the proper isolation standard should be applied. In addition, the radio receiver rules would be amended to provide that switches built-in to television receivers would be required to comply with similar technical performance standards. The Commission also proposes to subject all stand-alone input selector switches used to alternate between off-the-air and cable service to the self-testing equipment verification procedures of Part 2, Subpart J of the Rules. Finally, it proposes to require all cable/broadcast input selector switches to comply with the technical performance standards and the verification procedures, as proposed in the *Notice*, 30 days after publication in the **Federal Register** of the Report and Order in this proceeding. In this regard, comment is invited on the issue of application of any technical standards that may be adopted to switches for alternating between cable and broadcast service that have already been manufactured or are already in use. Of particular concern to the Commission is the possible situation where the newly adopted standards may exceed the technical performance of existing switches. The Commission intends to complete action on this issue in an expeditious manner in order that manufacturers may supply switches in accordance with the scheduled implementation of the new input selector switch rules adopted in the *Memorandum Opinion and Order* in the must carry proceeding.

4. The Commission seeks comment on these proposals and invites interested parties to submit alternative proposals for input selector switch technical standards. Any alternative proposals submitted should be accompanied by supporting information and technical data. The Commission emphasized that the scope of this proceeding is limited solely to the issues of technical standards and verification procedures for input selector switches used in conjunction with cable services.

5. This is a nonrestricted notice and comment rule making proceeding. *See* § 1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rule amendments would have a minimal impact on input selector switch manufacturers as most switches now meet or exceed the proposed technical standards. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

7. The Secretary shall cause a copy of this *Notice* to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new

or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 10, 1987, and reply comments on or before June 25, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

10. This Notice of Proposed Rule Making is adopted pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 15

Radio frequency devices.

Rule Changes

PART 15—[AMENDED]

Part 15 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 15 would continue to read as follows:

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

2. Part 15 is proposed to be amended by adding a new § 15.64 as follows:

§ 15.64 Television receiver transfer switch.

Where a television receiver is equipped with a transfer switch for selectively connecting the receiver either to an antenna or cable service, in either position of the receiver transfer switch, the maximum voltage in microvolts at the receiving antenna input terminals of the switch when terminated with a resistance (R ohms) matching the rated impedance of the antenna input of the switch, shall not exceed a value equal to the product of 0.346 and the square root of R. The maximum voltage shall correspond to peak envelope power of the video modulated signal during maximum amplitude peaks.

3. Section 15.606 is proposed to be amended by adding a new paragraph (c) to read as follows:

§ 15.606 Transfer switch.

* * * * *

(c) An external transfer switch used with a TV receiver or TV interface device and in conjunction with cable service shall comply with the technical requirements in paragraph (a) of this section. Compliance of external devices with these standards shall be considered satisfactory if it is demonstrated that the switch isolation exceeds 60 dB.

4. Section 15.616 is proposed to be amended by adding a new paragraph (d) and revising the title to read as follows:

§ 15.616 Equipment authorization requirements for the TV receiver transfer switch, the TV interface device and attachments thereto.

* * * * *

(d) An external transfer switch as specified in § 15.606(c) shall be verified pursuant to Subpart J of Part 2 to show compliance with the technical specification indicated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-10738 Filed 5-8-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1330

[Ex Parte No. 346 (Sub-No. 23)]

Railroad Exemption; Filing of Quotations Under Section 10721

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time and changes in procedure to notice of proposed rulemaking.

SUMMARY: On March 25, 1987, the Commission published a notice which proposed to exempt from regulation the filing of quotations for rail shipment of government traffic under section 10721. 52 FR 9513. Comments were due May 8, 1987. The Commission is extending the comment period to June 8, 1987. Reply comments will also be accepted. To allow for service of comments and replies, parties intending to participate shall file a notice of intent by May 15, 1987. A service list will be issued prior to the June 8th date for the initial comments. Replies will be due on June 28, 1987.

DATES: Notices of intent to participate are due May 15, 1987. Comments are due June 8, 1987. Replies are due June 28, 1987.

ADDRESSES: Send pleadings (original and 15 copies of any comment or reply) referring to Ex Parte No. 346 (Sub-No. 23), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7246.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 1, 1987.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 87-10631 Filed 5-8-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 25

Revision of the General Provisions for Fees and Charges To Include Criteria for Establishing and Collecting Entrance Fees on National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend Subpart E of 50 CFR Part 25 by setting forth criteria to provide for the establishment and collection of entrance fees on designated national wildlife refuges (NWR), and to provide that failure to pay the established entrance fees shall constitute a violation of refuge rules and regulations. The purpose of this rulemaking is to establish regulations concerning entrance fee collection as authorized by the Emergency Wetlands Resources Act (the Act) of 1986, and to initiate the process of notifying the public as required by the Administrative Procedure Act.

DATE: Comments must be received on or before June 10, 1987.

ADDRESSES: Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Room 3248, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Nancy Marx, Division of Refuges, U.S. Fish and Wildlife Service, Room 2343, 18th and C Streets, NW., Washington, DC 20240; Telephone (202) 343-3922.

SUPPLEMENTARY INFORMATION: The Emergency Wetlands Resources Act (Pub. L. 99-645) authorizes the Secretary of the Interior (Secretary) to charge entrance fees at designated NWRs (except in Alaska) provided that: (1) The

level of visitation for recreational purposes is high enough to justify the collection of fees for admission permits for economic reasons, (2) there is a practical mechanism in existence for implementing and operating a system of collecting fees for admission permits and (3) imposition of a fee for admission permits is not likely to result in undue economic hardship for a significant number of visitors to the refuge. These criteria will be applied with regard to the local area within which a particular refuge is located. The collection of entrance fees will shift a portion of the economic burden for use of these refuges from the general public to the direct user, consistent with the intent of the Act.

In determining the ability of certain refuges to implement and operate a fee collection system for admission permits, practical considerations include the Service's capability to construct and staff entrance facilities and to control access. Considering the criteria for establishing fees as stipulated in section 201 of the Act, refuges that have levels of visitation for recreational purposes high enough to justify the collection of fees for admission permits will not charge more than $3 per person or $7.50 per noncommercial vehicle at designated refuges. A valid Golden Eagle, Age, or Access Passport or a valid Federal Duck Stamp will allow the holder and those accompanying the holder in a noncommercial vehicle or in other than a noncommercial vehicle the holder's spouse, children or parents entry onto a designated refuge without further charge. Local notification, as provided in 50 CFR 25.31, will be given regarding seasons during which entrance fees will be charged and the rates for daily entrance.

Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding the criteria for establishment of entrance fees. Accordingly, written comments concerning this proposal may be submitted to the Assistant Director-Refuges and Wildlife, (address above) by the end of the comment period. All relevant comments will be considered by the Department prior to issuance of a final rule. Following adoption of the final rulemaking, the actual selection of individual refuges for entrance fee collection will be accomplished at the refuge level with public notification given through posting of signs and distribution of refuge publications as set forth in 50 CFR 25.31. Prior to implementation of entrance fees on designated refuges, there will be opportunity for public comment.

Conformance With Statutory and Regulatory Authorities

The Emergency Wetlands Resources Act of 1986 authorizes the Secretary to charge fees for admission permits at designated units of the National Wildlife Refuge System provided certain criteria are met. The purpose of this rulemaking is to set forth the criteria for designating refuges as entrance fee areas, to establish a process through which actual entrance fee areas will be identified, and to provide for penalties for evasion of the entrance fee regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more, or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The purpose of the Act is to provide additional revenues for the conservation of wetland resources of the Nation and for the operation and maintenance of refuges.

The Determination of Effects has been completed and analyzes the economic impacts. Based on this determination, the Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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. 3501 *et seq.*

Environmental Considerations

This rulemaking, consistent with the intent of the Act, will set forth the criteria used to establish entrance fees which will generate revenue for the conservation of wetland resources of the Nation and for the operation and maintenance of refuges, thereby adding to the protection and management of the environment. No NEPA compliance is required because "the issuance of special regulation for public use of FWS-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects" is a categorical exclusion.

Nancy A. Marx, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this proposed rulemaking document.

List of Subjects in 50 CFR Part 25

Administrative practice and procedures, Concessions, National Wildlife Refuge System, Safety, Wildlife refuges.

Accordingly, it is proposed to amend Part 25 of Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

PART 25—[AMENDED]

1. The authority citation for Part 25 would be revised to read as follows:

Authority: 16 U.S.C. 460k, 664, 668dd, 715i, and 3901 *et seq.*]

Subpart E would be revised to read as follows:

Subpart E—Fees and Charges

Sec.

Supbart E—Fees and charges

§ 25.51 General provisions.

Reasonable charges and fees may be established for public recreational use of and except in Alaska, entrance onto national wildlife rufuges. Regulations regarding recreational use fees are contained in 36 CFR Part 71. Regulations regarding entrance fees are contained in this Subpart E.

§ 25.52 Designation.

To be designated as an "Entrance Fee Area", a unit of the National Wildlife Refuge System must be found to demonstrate that:

(a) The level of visitation for recreational purposes is high enough to justify the collection of fees for admission permits for economic reasons;

(b) There is a practical mechanism in existence for implementing and operating a system of collecting fees for admission permits; and

(c) Imposition of a fee for admission permits is not likely to result in undue economic hardship for a significant number of visitors to the unit.

§ 25.53 Establishment of single visit entrance fees.

Entrance fees established for single visit permits shall consider the following

criteria with regard to the local area within which the refuge is located:

(a) The direct and indirect cost to the Government

(b) The benefits to the permit holder.

(c) The public policy or interest served.

(d) The comparable fees charged by non-Federal public agencies.

(e) The economic and administrative feasibility of fee collection.

§ 25.54 Posting and public notification.

The public shall be notified that an entrance fee is charged through refuge publications and posted designation signs in accordance with § 25.31 of this part.

§ 25.55 Refuge admission permits.

(a) Unless otherwise provided, persons entering an Entrance Fee Area shall obtain and be in possession of a valid admission permit.

(b) The following five types of permits allowing entrance onto an Entrance Fee Area will be available for issue or purchase at such area and, except for refuge-specific permits, at Fish and Wildlife Service Regional Offices and Washington Headquarters, and at other locations as may be designated.

(1) Single visit permits with a charge not to exceed $3 per person or $7.50 per noncommercial vehicle (single visit can be defined as 1–15 days, dependent upon a determination of the period of time reasonably and ordinarily necessary for such a visit at a particular refuge unit).

(2) Golden Eagle Passport.

(3) Golden Age Passport.

(4) Golden Access Passport.

(5) Federal Migratory Bird Hunting and Conservation (Duck) Stamp. To be valid, the Duck Stamp must be current and bear the signature of the holder on the front.

§ 25.56 Enforcement.

Permits issued or used for entrance onto Entrance Fee Areas are nontransferable. Failure to pay the entrance fee, to display upon request of an authorized official a valid permit, or to comply with other entrance fee provisions, rules or regulations, will be subject to the penalties prescribed in 50 CFR 28.31.

§ 25.57 Exceptions and exemptions.

At Entrance Fee Areas:

(a) Special admission permits for uses, such as group activities, may be issued.

(b) No entrance fee shall be charged for persons under 16 years of age.

(c) No entrance fee shall be charged for travel by private noncommercial vehicle over any road or highway established as part of the National Federal Aid System, which is commonly used by the public as a means of travel between two places which are outside the Entrance Fee Area.

(d) No entrance fee shall be charged for travel by private noncommercial vehicle over any road or highway to any land in which such person has a property interest if such land is within any Entrance Fee Area.

(e) Persons accompanying the holder of a valid Federal Duck Stamp or Golden Eagle, Age, or Access Passport in a single, private, noncommercial vehicle shall be entitled to general entrance.

(f) Where entry is by any means other than single, private, noncommercial vehicle, spouse, children, or parents accompanying the holder of a valid Federal Duck Stamp or Golden Eagle, Age, or Access Passport shall be entitled to general entrance.

Dated: April 14, 1987.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–10599 Filed 5–8–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217, 222 and 227

Sea Turtle Conservation; Shrimp Trawl Requirements; Reopening of Comment Period

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The comment period on the proposed rule that would require certain shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the Southeastern United States to use qualified gear to reduce the incidental catch and mortality of sea turtles (published at 52 FR 6179–6199 Mar. 2, 1987) is reopened until Friday, May 15, 1987 to enable agency representatives to attend a meeting of interested parties being held by U.S. Senator John Breaux (LA).

DATE: Written comments will be accepted until May 15, 1987.

ADDRESS: Comments on the proposed rules should be addressed to the Regional Director, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz (813) 893–3366 or David Cottingham (202) 377–5181.

Dated: May 6, 1987.

Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 87–10622 Filed 5–8–87; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 90
Monday, May 11, 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 COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Pretest of the Survey of Manufacturing Technology
Form number: Agency - SMT-1, SMT-2; OMB - NA
Type of request: New collection
Burden: 200 respondents; 100 reporting hours
Needs and uses: Policymakers in Government and industry have expressed a need for information on the patterns of use and diffusion of advanced manufacturing technologies. Approximately 200 manufacturing firms will be contacted in this pretest.
Affected public: Businesses or other for-profit institutions
Frequency: One time
Respondent's obligation:Voluntary
OMB desk officer: Don Arbuckle, 395-7340

Agency: Bureau of the Census
Title: 1987 Economic/Agriculture Censuses of Outlaying Areas
Form number: Agency - various; OMB - NA
Type of request: New collection
Burden: 365,810 respondents; 73,162 reporting hours
Needs and uses: The economic and agriculture censuses provide the only source of periodic, comparable, detailed data of the structure of outlying areas production, distribution, and service sectors. The five-year Economic/Agriculture censuses provide benchmarks for indexes of industrial production, business activities, sales, and various agricultural programs, all of which are essential for understanding current economic and agricultural developments.
Affected public: Farms, businesses or other for-profit institutions
Frequency: Quinquennial
Respondent's obligation: Mandatory
OMB desk officer: Don Arbuckle, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: May 5, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-10688 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency
Title: Business Development Report
Form number: Agency—MBDA 115 OMB—0640-0005
Type of Request: Extension of a currently approved collection
Burden: 100 respondents; 1,600 reporting hours
Needs and uses: This collection identifies minority business clients receiving Agency-sponsored management and technical assistance and the kind of assistance each receives. Respondents are MBDA-funded client services organizations.
Affected public: Individuals or households, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: Quarterly
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: May 5, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-10689 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-475-401]

Preliminary Results of Antidumping Duty Administration Review, Certain Values and Connections, of Brass, for Use in Fire Protection Systems from Italy

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Preliminary results of antidumping duty administration reivew.

SUMMARY: In response to a request by the petitioner and respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain values and connections, of brass, for use in fire protection systems from Italy. The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States and the period July 10, 1984 through February 28, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to asses dumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are

invited to comment on these preliminary results.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION: .

Background

On March 1, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 8354) the antidumping duty order on certain brass fire protection equipment from Italy. On May 156, 1986 the Department published a second amendment to the final determination of sales at less than fair value (49 FR 47066, November 30, 1984). The petitioner and respondent requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review for the period July 10, 1984 through February 28, 1986. We published a notice of initiation of the antidumping duty administrative review on April 18, 1986 (51 FR 13273). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain valves and connections, of brass, suitable for use in interior fire protection systems from Italy. This merchandise consists of single and double clapper siamese fire department connections and pressure restricting valves currently classifiable under items 680.1420 and 680.1440, respectively, of the Tariff Schedules of the United States Annotated.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed delivered price to unrelated purchasers in the United States and on the packed delivered price to an unrelated reseller. We made adjustments, where applicable, for U.S. and foreign inland freight, ocean freight, marine insurance, and brokerage and handling charges. No other adjustments were claimed or allowed.

Foreign Market Value

There were no home market sales of such or similar merchandise. Therefore, in calculating foreign market value, the Department used the price to unrelated purchasers in a third country (Canada) when there were sufficient sales of such or similar merchandise at or above the cost of production, or constructed value of such merchandise when there were no third country sales of such or similar merchandise, both as defined in section 773 of the Tariff Act. All Canadian sales were made at or above the cost of production. Third country price was based on the packed delivered price to unrelated customers in Canada.

Where applicable, we made adjustments for inland freight, brokerage and handling charges, commissions to unrelated parties, credit, packing, and differences in the physical characteristics of the merchandise. No other adjustments were claimed or allowed.

We calculated constructed value as the sum of materials and fabrication costs, general expenses, profit, and the cost of packing. For general expenses the Department used actual general expenses for the same class or kind of merchandise sold to third country because such expenses were greater than the statutory minimum of ten percent of the sum of materials and fabrication costs. We also used the actual profit rates for third country sales of the same class or kind of merchandise because those rates were higher than the statutory minimum of eight percent of general expenses and cost.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter or reseller	Time period	Margin (percent)
Rubinetterie A. Giacomini S.p.A.	7/10/84-02/28/86	0.00
Giacomini/Ganbrook Ltd.	7/10/84-02/28/86	85.54

Interested parties may submit written comments on these preliminary results within 20 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 20 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for Giacomini and Ganbrook.

For any future entries of this merchandise from a new exporter not covered in this administrative review, whose first shipments occurred after February 28, 1986 and who is unrelated to either reviewed party, a cash deposit of 85.54 percent shall be required on shipments of certain valves and connections, of brass, for use in fire protection systems from Italy. These deposit requirements are effective for all shipments of certain Italian valves and connections, of brass for use in fire protection systems, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: May 2, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-10671 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-008]

Preliminary Results of Antidumping Duty Administrative Review; Color Television Receivers From Korea

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioners, another domestic interested party, and the respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on color television receivers from Korea. The review covers the four known manufacturers and/or exporters of color television receivers to the United States currently covered by the order, and generally the period April 1, 1985 through March 31, 1986. The review

indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated difference between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Laura Merchant, Americo Tadeu or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/ 1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 41365) the final results of its last administrative review of the antidumping duty order on color television receivers from Korea (49 FR 18336, April 30, 1984). In April, 1986, the petitioners, another domestic interested party, and respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We therefore published a notice of initiation of the review on May 20, 1986 (51 FR 18475).

Scope of the Review

Imports covered by the review are sales of color television receivers, complete or incomplete, from Korea. The order covers all color television receivers regardless of tariff classification. The merchandise is currently classifiable under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9864, 684.9866, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, 687.3520 of the Tariff Schedules of the United States Annotated. The results of this review cover complete color television receivers and incomplete color televisions, the components of which are imported together. The results do not include imports of incomplete color television receivers, (i.e. color picture tubes or printed circuit boards). We have postponed review of these items until the next administrative review. The review covers four known manufacturers and/or exporters of Korean color television receivers to the United States currently covered by the order, and generally the period April 1, 1985 through March 31, 1986.

United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price and exporter's sales price were based on the packed f.o.b., c.i.f. or delivered price to unrelated purchasers in the United States.

When the product was sold by the exporter to an unrelated importer, and this sale occurred prior to the date of importation, the price of this sale was used to determine the purchase price.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the more appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We made adjustments, where applicable, for ocean freight, marine insurance, U.S. and Korean brokereage fees, Korean customs clearing fees, wharfage, export license fees, forwarding and handling charges, discounts, royalties, rebates, commissions to unrelated parties, and the U.S. subsidiary's selling expenses. Where applicable, we made an addition for import duties collected and rebated on imported raw materials used to produce subsequently exported merchandise, in accordance with § 353.10(d)(1)(ii) of the Commerce Regulations. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price or constructed value, as defined in section 773 of the Tariff Act. Home market price were used where sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a basis for comparison. Home market price was based on the packed delivered price to unrelated purchasers in the home market. We accounted for those taxes imposed in Korea, either rebated or not collected by reason of the exportation of the merchandise to the United States, by subtracting them from the home market price. Where applicable, we made adjustments for inland freight, forwarding, rebates, credit expenses, discounts,warranty, advertising and sales promotion, royalties, differences in the physical characteristics of the merchandise, and packing. We also made adjustments, where applicable, for indirect selling expenses to offset commissions and U.S. selling expenses deducted in ESP calculations.

Constructed value consisted of the sum of the costs of materials, fabrication, general expenses, profit, and the cost of packing. The amount added for general expenses was 10 percent of the sum of materials and fabrication costs. The amount added for profit was 8 percent of the sum of the costs of materials, fabrication, and general expenses. Actual costs for general expenses and for profit fell below the statutory minimums of 10 and 8 percent respectively.

We disallowed a claim for a level of trade adjustment because the information the respondent provided did

not demonstrate that distinct trade levels exist in the home and U.S. markets. Moreover, we again denied as a direct expense a claim for a cash discount because of inconsistencies in the recording of the expense found during the verification in the previous administrative review. No other adjustments were claimed or allowed.

Zenith alleged that Samsung, Daewoo, and Gold Star sold color televisions in the home market at prices below their costs of production, and that the Department must, therefore, require the submission of cost information. Zenith supported its allegation by referring back to the Department's finding of sales below cost in the last administrative review and asserting that this finding created a presumption that sales below cost were still occurring. On the basis of Zenith's allegation, we have conducted an analysis of Gold Star's costs of production. In the case of Samsung, we found less than 10% of its sales to have been made below cost in the last review, and therefore, absent additional evidence, we do not believe that another cost analysis is warranted. In the case of Daewoo, we found below cost sales during the first administrative review. We did not receive a timely allegation of sales below cost during the second administrative review and, therefore, did not require the submission of cost information for that period. Nevertheless, we have required Daewoo to submit cost information in this review, based upon the finding of below cost sales in the first review. We have not yet conducted a cost test on Daewoo. For Gold Star, we compared the home market sales price to the cost of production and we eliminated from our calculations any below cost sales of models when those sales constituted more than 10% of total sales of those models.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Daewoo Electronic Co., Ltd.	04/01/85-03/31/86	3.78
Gold Star Co., Ltd.	04/01/85-03/31/86	1.30
Quantronics Manufacturing Korea, Ltd.	04/01/85-03/31/86	1.74
Samsung Electronics Co., Ltd.	04/01/85-03/31/86	4.49

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm, a cash deposit of 4.49 percent shall be required. These deposit requirements are effective for all shipments of Korean color television receivers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556 August 13, 1985).

Dated: May 2, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-10672 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-029]

Preliminary Results of Antidumping Duty Administrative Review, Tentative Determination to Revoke in Part, and Intent to Revoke in Part; Fishnetting of Man-made Fibers From Japan

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review, tentative determination to revoke in part, and intent to revoke in part.

SUMMARY: In response to requests by the petitioners, seventeen respondents and eleven importers, the Deaprtment of Commerce has conducted an administrative review of the antidumping finding on fishnetting of man-made fibers from Japan. The review covers twenty manufacturers and/or exporters and one third-country reseller of this merchandise and generally the period June 1, 1980 through May 31, 1986. The review indicates the existence of dumping margins for some of the firms during certain periods.

As a result of the review, the Department has tentatively determined to revoke the finding with respect to Nippon Kenmo, Inagaki/Moribun Shoten, and Osada/Moribun Shoten, and intends to revoke the finding with respect to Amikan and Hakodate.

When no information was received in response to our questionnaire, we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

Interested parties are invited to comment on these preliminary results, tentative determination to revoke in part, and intent to revoke in part.

EFFECTIVE DATE: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes, or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On February 1 and May 8, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 4026, 19558) a tentative determination to revoke in part the antidumping finding on fishnetting of man-made fibers from Japan (37 FR 11560, June 9, 1972). On April 30, 1984, the Department published in the **Federal Register** (49 FR 18339) the final results of its last administrative review of the antidumping finding. We began this review of the finding under our old regulations. After the promulgation of our new regulations, the petitioners, 17 respondents, and 11 importers requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published notices of initiation on February 12, 1986 (51 FR 5219), March 14, 1986 (51 FR 8862), July 9, 1986 (51 FR 24883), and July 17, 1986 (51 FR 25293), as required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has

now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of fishnetting of man-made fibers, currently classifiable under items 355.4520 and 355.4530 of the Tariff Schedules of the United States Annotated.

The review covers twenty manufacturers and/or exporters and one third-country reseller of Japanese fishnetting of man-made fibers and generally the period June 1, 1980 through May 31, 1986.

On December 12, 1986, the International Trade Commission ("ITC") determined that an industry in the United States would not be materially injured or threatened with material injury nor would the establishment of an industry in the United States be materially retarded by reason of imports of salmon gill fishnetting of man-made fibers from Japan covered by the antidumping finding if that portion of the finding concerning salmon gill fishnetting were to be revoked. The ITC found that the U.S. industry consisted of two companies, one of which ceased production of salmon gill fishnetting in November 1984. For purposes of this preliminary determination we have determined that the effective date of the revocation of the portion of the finding applicable to salmon gill fishnetting is December 12, 1986—the date of the ITC determination.

Various importers have requested that the Department make this revocation retroactive as of November 1984, since significant domestic production of salmon gill fishnetting had ended by that date. We will include our decision on this issue in the final results of this adminstrative review.

Puretic Supplies and Sanyo Enterprises failed to respond to the Department's antidumping questionnaire. We therefore used the best information available for assessment and estimated antidumping duties cash deposit purposes for these firms. The best information available is each firm's rate from the last review.

The tentative revocations currently in effect for any of the firms covered by this review will cease to be effective with respect to any firm for which a dumping margin is finally determined to exist for this review period.

United States Price

In calculating United States price, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the packed f.o.b., c.i.f., or delivered price to either the first unrelated purchaser in the United States or to unrelated Japanese trading companies for export to the United States. Where applicable, we made adjustments for U.S. and foreign inland freight, ocean freight, marine insurance, forwarding fees, shipping charges, and brokerage/handling charges. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price or third-country price, both as defined in section 773 of the Tariff Act, as appropriate. When insufficient quantities of such or similar merchandise were sold in the home market during the period to provide a basis for comparison, we used third-country price.

Home market price was based on the packed delivered price to unrelated purchasers in the home market, with adjustments, where applicable, for inland freight, insurance, interest, and differences in packing.

Third-country price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in various third countries. We made adjustments, where applicable, for ocean freight, marine insurance, inland freight, forwarding fees, shipping charges, dyeing, interest, and commissions to unrelated parties. No other adjustments were claimed or allowed.

Preliminary Results of the Review, Tentative Determination to Revoke in Part, and Intent to Revoke in Part

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Amikan	06/01/82-05/31/86	0
Fukui	06/01/82-05/31/83	0.12
	06/01/83-05/31/86	0
Hakodate	06/01/82-04/30/86	0
Hakodate/ Mitsui	06/01/82-05/31/83	12.41
Hirata Spinning	10/01/83-05/31/85	9.83*
Inagaki/ Moribun Shoten	06/01/82-04/30/84	0
Inagaki/ Nichimen	06/01/82-09/30/83	0*
Maruhei	06/01/82-05/31/83	0.79
	06/01/83-05/31/84	0.42
	06/01/84-05/31/85	0
Momoi	10/01/83-05/31/84	0.21
	06/01/84-05/31/86	0
Moririn	06/01/82-05/31/83	0
	06/01/83-05/31/85	0*
Morishita	10/01/83-05/31/85	12.66
	06/01/85-05/31/86	12.66*
Morishita/ Mitsui	10/01/83-05/31/86	18.30*
Nippon Kenmo	06/01/82-05/31/86	0
Osada/ Moribun Shoten	06/01/82-04/30/84	0
Osada/ Nichimen	06/01/82-05/31/83	0.005
	06/01/83-04/30/84	0.004
Sanyo Enterprises	04/01/81-06/30/82	18.30
Taito Seiko	05/31/84-05/31/85	18.30*
Taito Seiko/ Nakamura Suisan	06/01/82-05/31/85	18.30*
Toyama	06/01/80-05/31/81	7.17
	06/01/81-05/31/82	4.95
	06/01/82-05/31/83	4.05
Yamaji	06/01/82-05/31/84	0
Third-Country Reseller (Country):		
Puretic Fishing Gear/ (Canada)	06/01/82-05/31/86	18.30

*No shipments during the period.

Nippon Kenmo, Inagaki/Moribun Shoten, and Osada/Moribun Shoten requested that we revoke the antidumping finding with respect to these firms. Nippon Kenmo, Inagaki/Moribun Shoten, and Osada/Moribun Shoten have made all sales of Japanese fishnetting of man-made fibers to the United States at not less than fair value for four years. As provided for in § 353.54(e) of the Commerce Regulations, Nippon Kenmo, Inagaki/Moribun Shoten, and Osada/Moribun Shoten have agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that Japanese fishnetting of man-made fibers exported to the United States by them are being sold at less than fair value.

Therefore, we tentatively determine to revoke the antidumping finding on Japanese fishnetting of man-made fibers with respect to Nippon Kenmo, Inagaki/Moribun Shoten, and Osada/Moribun Shoten. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Nippon Kenmo, Inagaki/Moribun Shoten, or Osada/Moribun Shoten and entered, or withdrawn from warehouse, for

consumption on or after the date of publication of this notice.

As a result of our review, the Department also intends to revoke the antidumping finding with respect to Amikan Fishing Net Mfg. Co., Ltd. and Hakodate Seimo Sengu Co., Ltd. Amikan and Hakodate made all sales at not less than fair value to the United States for 6 years. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Amikan and Hakodate and entered, or withdrawn from warehouse, for consumption on or after February 1, 1984 and May 8, 1984, respectively.

Interested parties may submit written comments on these preliminary results, tentative determination to revoke in part, and intent to revoke in part within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter.

Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms. Since the most recent margin for Osada/Nichimen is less than 0.5 percent and therefore *de minimus* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for Osada/Nichimen. For any future shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms (49 FR 18339, April 30, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative review, whose first shipments occurred after May 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements and waiver are effective for all shipments of Japanese fishnetting of man-made fibers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, intent to revoke in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.52a, 35354).

Dated: May 2, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-10674 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-05-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than May 31, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May, for the following periods:

	Period
Antidumping Duty Proceeding	
Portland Cement from the Dominican Republic	05/01/86-04/30/87
Circular Pipes and Tubes from Taiwan	05/01/86-04/30/87
Portable Electric Typewriters from Japan	05/01/86-04/30/87
Construction Castings from Brazil	10/21/85-04/30/87
Construction Castings from India	10/28/85-04/30/87
Construction Castings from the People's Republic of China	10/28/85-04/30/87
Pipes and Tubes from India	12/31/85-04/30/87
Pipes and Tubes from Turkey	01/03/86-04/30/87
Nails from the People's Republic of China	01/09/86-04/30/87
Pipe Fittings from Brazil	01/14/86-04/30/87
Impression Fabric from Japan	05/01/86-04/30/87
Offshore Platform Jackets and Piles from Japan	11/15/85-04/30/87
Offshore Platform Jackets and Piles from South Korea	11/15/85-04/30/87
Pipe Fittings from South Korea	01/14/86-04/30/87
Pipe Fittings from Taiwan	01/14/86-04/30/87
Countervailing Duty Proceeding	
Bricks from Mexico	01/01/86-12/31/86
Ceramic Tile from Mexico	01/01/86-12/31/86
Viscose Rayon Staple Fiber from Sweden	01/01/86-12/31/86
Certain Heavy Iron Construction Castings from Brazil	08/12/85-12/31/86
Fresh Atlantic Groundfish from Canada	01/09/86-12/31/86
Offshore Platform Jackets and Piles from South Korea	07/09/85-12/31/86

Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Deparment will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by May 31, 1987.

If the Department does not receive by May 31, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

May 1, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-10673 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-DS-M

[Application #87-00003]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Eximark

Corporation ("Eximark"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

(a) Products

All products, including high technology products related to data processing and telecommunications.

(b) Services

Consulting; training; market research; advertising; promotion; marketing; transportation; trade documentation; communications; order processing; warehousing; foreign exchange; financing; insurance; product research, design and assembly for export; and providing advice regarding compliance with Export Administration regulations or other government controls.

(c) Export Trade Facilitation Services (As They Relate to the Export of Products)

Market research; location of overseas distribution channels; development of agreements for business partner relationships; providing assistance regarding compliance with Export Administration regulations or other government controls; providing advice on foreign business practices; freight management; customs clearance; communications; export-import documentation; acquiring necessary foreign regulatory approvals; consulting; training; advertising; promotion; marketing; transportation; order processing; warehousing; foreign exchange; financing; insurance; and product research, design and assembly for export.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Definitions

(a) "Export Intermediary" means a person who acts as a broker, distributor, sales representative, or sales or marketing agent, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services, for sales in the Export Markets.

(b) "Supplier" means a person who produces, provides, or sells Products or Services for sale in the Export Markets.

Export Trade Activities and Methods of Operation

Eximark may: 1. Enter into exclusive and nonexclusive agreements with individual Suppliers of Products and Services to act as an Export Intermediary and/or consultant for sales in the Export Markets wherein:

(a) Eximark agrees not to represent any competitors of a Supplier in any Export Market unless authorized by the Supplier; and/or

(b) The Supplier agrees not to sell, directly or indirectly through any other intermediary, into the Export Markets in which Eximark represents the Supplier as an Export Intermediary.

For itself or on behalf of any Supplier, Eximark may establish the prices, terms of sale and quantities at which Products and Services shall be sold in the Export Markets and may also allocate the Products or Services to be sold to any party in the Export Markets.

2. Enter into agreements with individual Suppliers for the sale of Products and Services in any Export Market wherein the Supplier agrees to compensate Eximark if sales occur in that Export Market.

3. Enter into exclusive and nonexclusive agreements with individual customers, distributors, sales agents, sales representatives or other persons located in foreign countries or in the United States for the sale of Products and Services in the Export Markets wherein Eximark grants that person or those persons the exclusive right to sell particular Products and Services within particular Export Markets.

4. Refuse to deal with any person for the sale of Products and Services in the Export Markets.

5. Enter into exclusive or nonexclusive agreements with individual Suppliers to act as a procuring agent with respect to the sale of Suppliers' Products and Services in the Export Markets.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 5, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87–10690 Filed 5–8–87; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

[Docket No. 70484–7084]

Commercial Fisheries Research and Development

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

ACTION: Notice of determination of a commercial fishery failure due to a resource disaster.

SUMMARY: NOAA issues this notice that Maryland and Virginia have submitted resource in the Chesapeake Bay. Each State has determined that a natural disaster has occurred to its oyster fishery. The Secretary of Commerce, after a technical review of the States' documents, announces his finding that a natural resource disaster has occurred in Chesapeake Bay, and authorizes appropriated funds to be used for resource recovery projects in Chesapeake Bay.

FOR FURTHER INFORMATION CONTACT: Austin R. Magill, Office of Fisheries Management, NMFS, Washington, DC 20235, 202–673–5272.

SUPPLEMENTARY INFORMATION: The Chesapeake Bay oyster population has been plagued by the recurring problem of MSX (*Haplosporidium nelsoni*) since the late 1950s when the protozoan organism was first detected. High mortalities from MSX are associated with salinity values greater than 15 parts per thousand (ppt). As prevalence of MSX subsided somewhat in the late 1960s–early 1970s, Maryland and

Virginia were able to sustain a substantial fishery through cooperative State/Federal programs of shell cultch planting and seed transplanting.

The drought conditions experienced by the mid-Atlantic States beginning in the early 1980s have reduced freshwater runoff, resulting in increased salinity in many portions of Chesapeake Bay. Autumn 1986 oyster bar survey information demonstrated that MSX disease has spread through most oyster bars, with MSX levels comparable to those observed in 1981 and 1982, when significant mortalities occurred. Mortalities on beds in the Nanticoke River have been as high as 86 percent. Overall, reductions of over 40 percent in yield of marketable oysters have occurred in Maryland and, depending upon future salinity regimes in the upper bay, these conditions could continue through 1990.

As population levels of oysters have decreased, reproduction has become increasingly irregular in both quantity and geographical distribution of spat set. Further, if high salinity values continue (considered likely for 1987), disease successful spat set from the past several years will suffer mortality.

The Chesapeake Bay oyster resources needs several good years of reproductive success, followed by low disease mortality and high levels of favorable recruitment to the fishery in order to begin rebuilding the population to former levels of abundance. Maryland and Virginia have initiated comprehensive oyster management and restoration programs to aid this effort with an eventual goal of rebuilding the oyster resources to their former abundance. As part of this effort, each State has submitted a proposal for funding under subsection 4(b) of Pub. L. 88–309 which would continue, expand, and complement efforts already underway or contemplated with State funding. Activities contemplated by both states include dredging and planting of oyster shell and distributing seed oystes. Additionally, Maryland plans to plant surf clam shell and fresh oyster shell recovered from shucking houses. These activities would assist in stabilizing and restoring the oyster resource.

A technical review of the State proposals by NMFS staff from the Northeast Region and the Northeast Fisheries Center indicates that a resource disaster has occurred in Chesapeake Bay as defined under the terms of subsection 779b of the Commercial Fisheries Research and Development Act of 1964, as amended (Pub. L. 88–309, subsection 4(b)). Therefore, as the authorized representative of the Secretary of Commerce, I hereby determine that funds appropriated by Pub. L. 99–500 and Pub. L. 99–591 may be used for the purpose of subsection 4(b) of Pub. L. 88–309 to restore and return to production the damaged oyster resources of the Chesapeake Bay.

Authority: 16 U.S.C. 779 *et seq.*

Dated: May 5, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 87–10621 Filed 5–8–87; 8:45 am]

BILLING CODE 3510–22–M

[P 349]

Marine Mammals; Proposed Permit Modification Request by West Coast Whale Research Foundation

Notice is hereby given that the West Coast Whale Research Foundation, c/o Elizabeth A. Mathews, Applied Sciences 273, Center for Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064, has requested a modification of Permit No. 493 issued on February 28, 1985 (50 FR 9481), as modified on October 4, 1985 (50 FR 41550), and March 6, 1987 (52 FR 7007), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and the regulations governing endangered species permits (50 CFR Part 217–222).

The Permit Holder is requesting to include the Kona coast of the Big Island of Hawaii in the study of humpback whales (*Megaptera novaeangliae*) and authorization to observe and photographically identify all cetacean species that are encountered during the research.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the Modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this Modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Serivce, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular Modification would be appropriate. The holding of such hearing is at the discretaion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this Modification are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above Modification are available for review by interested persons in the following offices: Office of the Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dr. Nancy Foster,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

May 4, 1987.

[FR Doc. 87–10649 Filed 5–8–87; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Roberts Laboratories, Inc.

The National Technical Infomation Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories, Inc., having a place of business in Eatontown, NJ, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Substituted N-Methyl Derivatives of Mitindomide," U.S. Patent Application Serial Number 6–604, 136. The patent rights in this invention has been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent

Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87-10679 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Revisions in Officials Authorized to Issue Export Licenses/Commercial Invoices for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products From the People's Republic of China

May 5, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and the export licensing system of February 16, 1984, as amended, the People's Republic of China has notified the United States Government that the following additional authorities have been named to issue export licenses/commercial invoices for textile and apparel products subject to the terms of the bilateral agreement: Guangzhou Foreign Economic Relations and Trade Commission, Fu Gian Road, Guangzhou, China; Xi'an Foreign Economic Relations and Trade Bureau, 159, Bei Yuan Men, Xi'an, China

The purpose of this notice is to advise the public of this change.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-10687 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-10-M

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Board of Trade and the Commodity Exchange, Inc., for Designation as Contract Markets in Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed futures contracts.

SUMMARY: The Chicago Board of Trade ("CBT") has applied to the Commodity Futures Trading Commission ("Commission") for designation as a contract market in Corporate Bond Index futures. In addition, the Commodity Exchange, Inc. ("COMEX"), has applied for designation as a contract market in futures on the Moody's Investment Grade Corporate Bond Index. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, hs determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments on the CBT's Corporate Bond Index futures contract and the COMEX's Moody's Investment Grade Corporate Bond Index futures contract must be received on or before July 10, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the specific futures contract being addressed.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT and the COMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the CBT or COMEX in support of their applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC, on May 5, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-10620 Filed 5-8-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance; Meeting

May 2, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance will meet at the Anser Corporation, 1215 Jefferson Davis Highway, Arlington, VA, on June 4 and June 5, 1987.

The purpose of this meeting is to receive briefings on and to discuss air base operability, survivability, and basing posture and to investigate the application of advanced technology to the enhancement of air base operability.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-10680 Filed 5-8-87; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Ad Hoc Committee on Airships; Meeting

May 4, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Airships will meet on May 27th and 28th, 1987, at the Pentagon, room 5D982, from 8:00 am to 5:00 pm each day. The purpose of the meeting is to review, discuss and evaluate the suitability of airships to perform certain Air Force roles and missions.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–10678 Filed 5–8–87; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 1–3 June 1987

Time: 0900–1600, 1 June 1987, Fort Carson, CO, 0900–1200, 2 June 1987, Fort Carson, CO, 0800–1200, 3 June 1987, Fort Ord, CA.

Agenda:

The Army Science Board's Ad Hoc Subgroup on Water Supply and Management on Western Installations will meet. This will be the third meeting. The group will study missions and planning processes of Fort Carson and Fort Ord in light of the current and projected water supplies. The group will also meet with state and local water officials. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The 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. 87–10613 Filed 5–8–87; 8:45 am]

BILLING CODE 3710–08–M

Armed Forces Institute of Pathology, Scientific Advisory Board; Meeting

In order to comply with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board, June 11–12, 1987, at 0830 hours in the Director's Conference Room, Armed Forces Institute of Pathology, Washington, DC 20306–6000. This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to consultation, education and research. The Executive Secretary from whom substantive program information may be obtained is Colonel William R. Tuten, III, Executive Officer, Armed Forces Institute of Pathology, Washington, DC 20306–6000, telephone 202–576–2900.

For the Director:

William R. Tuten, III,

Colonel, MS, USA, Executive Officer.

[FR Doc. 87–10746 Filed 5–8–87; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of information collection and form number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for Commission or Warrant Rank, USN or USNR, 0703–0029

NAVCRUIT 1100/11

Information is provided by the applicant and utilized by a Selection Board to determine applicant's qualifications for a commission. Information can be provided by the applicant only.

Individuals or Households

Responses 20,000

Burden hours 10,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the imformation collection proposal may be obtained from P. Hannam, Assistant Director, Officer Programs Divisions, U.S. Navy Recruiting Command, Arlington, Virginia, telephone (212) 696–4775.

May 6, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–10696 Filed 5–8–87; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of information collection and form number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

Extension

Drug Statement for NROTC Application, 0703–0024

NAVCRUIT 1131/5

Information is provided by the NROTC applicant as part of the application process. The information is used by Headquarters, Navy Recruiting Command to determine applicant's need and eligibility for a waiver.

Individuals or Households

Responses 15,000

Burden hours 3,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the imformation collection proposal may be obtained from Commander J.M. Thomas, College Program Branch, U.S. Navy Recruiting

Command, Arlington, Virginia, telephone (202) 696–4581.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 6, 1987.

[FR Doc. 87–10697 Filed 5–8–87; 8:45 am]

BILLING CODE 3810–01–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on the Navy's Role in the Air Defense Initiative will meet on May 27, 1987. The meeting will be held at the Science Applications International Corporation, 1710 Goodridge Drive, McLean, Virginia. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on May 27, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to identify appropriate research efforts, management techniques, and interservice cooperative efforts related to the air defense initiative. The agenda will include technical briefings and discussions related to service policies, perspectives, concepts of operations, and the intelligence threat. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 4, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–10618 Filed 5–8–87; 8:45 am]

BILLING CODE 3810–AE–M

Performance of Commercial Activities; Announcement of Program Cost Studies

Department of the Navy, Headquarters Marine Corps, intends to conduct OMB Circular A–76 (48 FR 37110, August 16, 1983) cost studies of various functions at listed activities commencing June 11, 1987. Cost study process is a rigorous, time-consuming procedure and, depending upon size of functions involved, can take several months to several years to complete. When bids/proposals are desired, appropriate advertisements will be placed. No consolidated bidders' list is being maintained since solicitations will be processed by various contracting offices throughout the United States.

Marine Corps Air Ground Combat Center, Twentynine Palms, CA

Training Devices and Simulators.

Marine Corps Air Station, Beaufort, SC

Custodial Services.

Harold L. Stoller, Jr.,

Commander, JAGC, USN, Federal Register Liaison Officer.

May 5, 1987.

[FR Doc. 87–10619 Filed 5–8–87; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP87–36–000]

Walter S. Fees, Jr., Complainant v. Northwest Pipeline Corp., Respondent; Filing of Complaint

May 6, 1987.

Take notice that on March 9, 1987, Walter S. Fees, Jr., (Complainant) filed with the Commission pursuant to Rule 206 of the Commission's rules of practice and procedure a complaint against Northwest Pipeline Corporation (Northwest), requesting the Commission to find that Northwest has incorrectly calculated price adjustments for Btu content for gas sold by Complainant to Northwest. According to Complainant, Northwest utilizes a "wet Btu" adjustment method whereas the applicable contracts provide for adjustments based on the actual Btu content of gas as delivered.

Complainant states that Commission Order No. 356 provides that the maximum lawful prices prescribed by the NGPA shall apply to Btu's contained in a standard cubic foot of gas saturated with water vapor at 60 degrees F. under a pressure equal to 30 inches of mercury, but that the Commission has stated that it would allow contractually authorized Btu adjustments so long as the adjustments do not raise the price above the maximum lawful price. Complainant claims that when the price of its gas has fallen below the NGPA maximum lawful price, Northwest has incorrectly calculated Btu adjustments based on the "wet Btu" adjustment method instead of a "dry Btu" method provided under its contracts.

Any person desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection. Answers to the complaint are due within the same time period.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–10661 Filed 5–8–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–531–000]

FMP Operating Co., A Limited Partnership; Filing of Application

May 6, 1987.

Take notice that on April 23, 1987, FMP Operating Company (FMP) of P.O. Box 60004, New Orleans, Louisiana, 70160–0004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) 15 U.S.C. 717c and 717f, and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Parts 154 and 157 (1986) for blanket limited-term abandonment authorizaion for all jurisdictional categories of gas to the extent the gas is released by the purchaser and a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of such abandoned gas produced by Applicant, and its joint interest owners, with pregranted abandonment of such sales, all to be effective for a three-year term

commencing with the effective date of the requested authorizations. This application is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 19, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-10662 Filed 5-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-38-000]

Fuel Resources Development Co., Complaint v. Northwest Pipeline Corp., Respondent; Filing of Complaint

May 6, 1987.

Take notice that March 9, 1987, Fuel Resources Development Co. (Complainant) filed with the Commission pursuant to Rule 206 of the Commission's rules of practice and procedure a complaint against Northwest Pipeline Corporation (Northwest). Complainant requests the Commission to find that Northwest has improperly calculated an amount attributable to Btu content adjustments for gas sold by Complainant to Northwest. According to Complainant, Northwest utilizes a "wet Btu" adjustment method whereas the contract provides for adjustment based on the actual Btu contract of gas as delivered.

Complainant states that Commission Order No. 356 provides that the maximum lawful prices prescribed by the NGPA shall apply to Btu's contained in a standard cubic foot of gas saturated with water vapor at 60 degrees F. under a pressure equal to 30 inches of mercury, but that the Commission has stated that it will allow contractually authorized Btu adjustments so long as the adjustments do not raise the price above the maximum lawful price. Complainant claims that when the price of its gas has fallen below the NGPA maximum lawful price, Northwest has incorrectly calculated Btu adjustments based on the "wet Btu" adjustment method instead of a "dry Btu" method provided under its contract.

Any person desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days after publication of this notice in the **Federal Register.** All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection. Answers to the complaint are due within the same time period.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-10663 Filed 5-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-304-000]

Hadson Gas Systems, Inc., Complainant and Pacific Gas Transmission Co., Respondent; Filing Complaint

May 1, 1987.

Take notice that on March 25, 1987, Hadson Gas Systems, Inc. (Complainant) filed a complaint against Pacific Gas Transmission Company (Respondent) for failing to properly record the time at which Complainant made its request on January 13, 1987 for blanket certificate transportation service, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.[1]

On January 13, 1987, Respondent filed with the Commission an application in Docket No. CP87-159-000 for a blanket certificate of public convenience and necessity pursuant to § 284.221 of the Commission's regulations. Once the filing was made with the Commission, Respondent began accepting requests for blanket certificate transportation service.

Complainant states that it submitted a transportation service request to Respondent at 9:10 a.m. on January 13, 1987. Complainant believes its request for transportation service was the second request received by respondent that morning. Complainant states that Respondent asserts that the transportation request was not received until 9:00 a.m., and that Complainant's request was the fourth request received that morning.

Complainant requests that the Commission require Respondent to file copies of its logging-in forms for transportation service requests, time-stamped pages of each service request, and telecopied service requests. Complainant further requests that the Commission (1) find and declare that Complainant's transportation service request was the second request received by Respondent on January 13, 1987, (2) order Respondent, if and when it commences Order No. 436 transportation service, to execute contracts and to accept nominations for service in accordnace with the sequence in which transportation service requests were received, and (3) grant such other relief as may be appropriate.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before May 15, 1987 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

[1] Complainant filed its pleading in Docket No. CP87-159-000, Respondent's blanket certificate application proceeding, pursuant to Rule 212, 18 CFR 385.212, of the Commission's Rules of Practice and Procedure. Rule 212 permits the filing of a motion seeking specific relief or a ruling in a Commission proceeding. Rule 206, 18 CFR 385.206, permits any person to file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rules order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction. In view of the nature of Complainant's pleading, we have determined to treat it as a complaint filed pursuant to Rule 206.

motion to intervene in accordance with the Commission's Rules.[2]

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-10664 Filed 5-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-53-001, et al.]

Texaco Producing Inc.; Filing of Application

May 5, 1987

Take notice that on April 17, 1987, Texaco Producing Inc. (TPI), of P.O. Box 52332, Houston, Texas 77052, filed an application pursuant to the provisions of the Natural Gas Act for Certificates of Public Convenience and Necessity to continue sales being made under permanent certificates issued to Texaco Oils Inc. in each of the dockets listed in the attached Exhibit "A" by substituting Texaco Producing Inc., in lieu of Texaco Oils Inc., as certificate holder and for the redesignation of all Texaco Oils Inc.'s Rate Schedules as those of Texaco Producing Inc., all as more fully shown on the attached Exhibit "A". This application is on file with the Commission and open to public inspection.

Applicant acquired by merger executed December 22, 1986, effective December 31, 1986, the interest of Texaco Oils Inc. in certain properties.

Any person desiring to be heard or or to make any protest with reference to said application should on or before May 18, 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.

Kenneth F. Plumb,

Secretary.

[2] Persons that filed responses to Complainant's pleading in Docket No. CP87-159-000 do not need to refile their responses. The Commission will reassign the responses to Docket No. CP87-304-000. However, any person, other than Respondent, wishing to become a party in this proceeding must file a motion to intervene in Docket No. CP87-304-000.

EXHIBIT "A"

Former Texaco Oils Inc. FERC gas rate schedule No	Redesignated Texaco Producing Inc FERC gas rate schedule No	Certificate docket No.	Purchaser	Field	County, State
1		CI85-53-000	Arkansas Louisiana	Kinta	Pittsburg, OK.
2		CI85-54-000	Arkansas Louisiana	Witcherville, Area	Sebastian, AR.
3		CI85-55-000	Ringwood	Ringwood	Major, OK.
4		CI85-56-000	Northern Natural	Hugton, (Evalyn-Cordit)	Seward, KS.
5		CI85-57-000	Arkansas Louisiana	Kinta	La Flore, OK.
6		CI85-58-000	Arkansas Louisiana	Ross	Crawford, AR.
7		CI85-59-000	Arkansas Louisiana	Wilburton	Latimer, OK.
8		CI85-60-000	El Paso	Blanco, Pictured Cliffs	Rio Arriba, NM.
9		CI85-61-000	Arkansas Louisiana	Marlow	Stephens, OK.
10		CI85-62-000	Panhandle	Gage	Ellis, OK.
11		CI85-63-000	Lone Star	Cruce	Stephens, OK.
12		CI85-64-000	ANR	Cedarville	Major, OK.
13		CI85-65-000	Panhandle	Mocane-Laverne	Beaver, OK.
14		CI85-66-000	Northern Natural	Cedardale, Northeast	Woodward, OK.
15		CI85-67-000	ANR	No. Weatherford	Custer, OK.
16		CI85-68-000	Northwest Pipeline	Ignacio Blanco	La Plata, CO.
17		CI85-69-000	Northwest Pipeline	Ignacio Blanco	La Plata, CO.
18		CI85-70-000	Northwest Pipeline	Ignacio Blanco	La Plata, CO.
19		CI85-71-000	Northwest Pipeline	Ignacio Blanco	La Plata, CO.
20		CI85-72-000	Northwest Pipeline	Ignacio Blanco	La Plata, CO.
21		CI85-73-000	Northwest Pipeline	Ignacio Blanco	La Plata, CO.
22		CI85-74-000	Northwest Pipeline	Ignacio Blanco	La Plata, CO.
23		CI85-75-000	ANR	Okeene Northwest	Major, OK.
24		CI85-76-000	ANR	Okeene Northwest	Major, OK.
25		CI85-77-000	ANR	Okeene Northwest	Major, OK.
26		CI85-78-000	Colorado Interstate	Greenwood	Morton, KS.
27		CI85-79-000	Northwest Pipeline	Bird Canyon	Sablette, WY.
28		CI85-80-000	El Paso	Aztec Fruitland	Rio Arriba, NM.
29		CI85-81-000	Williams Natural Gas Co	Hugoton	Seward, KS.
30		CI85-82-000	Northwest Pipeline	San Juan, Basin Area	San Juan NM.
31		CI85-83-000	El Paso	Undesignated, Gallup	Rio Arriba, NM.
32		CI85-84-000	Williston Basin Interstate	Boysen	Fremont, WY.
33		CI85-85-000	El Paso	WAW Pictured, Cliffs	San Juan, NM.
34		CI85-86-000	El Paso	WAW Pictured, Cliffs	San Juan, NM.
35		CI85-87-000	Panhandle	Borlhero N.W.	Meade, KS.
36		CI85-88-000	Northern Natural	Harper Ranch	Clark, KS.
37		CI85-89-000	Northern Natural	Harper Ranch	Clark, KS.
38		CI85-90-000	Northwest Pipeline	Ignacio Blanco	La Plata, CO.
39		CI85-91-000	El Paso	Winchester	Eddy, NM.
40		CI85-92-000	Northwest Pipeline	Ignacio Blanco	La Plata, CO.
41		CI85-607-000	Lone Star Gas	Sho-Vel-Tum	Stephens, OK.
42		CI85-608-000	Sun Exploration	Mustang	Canadian, OK.

[FR Doc. 87-10665 Filed 5-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-408-000, et al.]

Boston Edison Co., et al.; Electric Rate and Corporate Regulation Filings

May 6, 1987.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Co.

[Docket No. ER87-408-000]

Take notice that Boston Edison Company of Boston, Massachusetts ("Edison") on April 29, 1987 tendered for filing an agreement for the exchange of power between itself and Montaup Electric Company of Boston, Massachusetts ("Buyer").

Under the agreement, the parties may negotiate daily power exchanges involving Edison units and entitlements and Buyer's facilities. The parties state that the purpose of the power exchanges is to attain greater efficiencies of operation.

Edison requests waiver of the Commission's notice requirements to permit the Agreement to become effective on August 29, 1983.

Copies of the filing have been served upon Buyer and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Cambridge Electric Light Co.

[Docket No. ER86-692-001]

Take notice that on April 30, 1987 Cambridge Electric Light Company ("Cambridge") submitted for filing its compliance refund report and revised affected rate schedule pursuant to the Commission's order issued February 26, 1987.

Copies of the tendered filing have been served by Cambridge upon the Town of Belmont, Massachusetts, the Commission's Staff and the Massachusetts Department of Public Utilities.

Comment date: May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Co.

[Docket No. ER87-414-000]

Take notice that on April 30, 1987 the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during March 1987, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company.	Supplement No. 65
Montana Power Company.	Supplement No. 49
Sierra Pacific Power Company.	Supplement No. 62
Los Angeles Dept of Water & Power.	Supplement No. 36

Comment date: May 20, 1987, in accordance with Standard Paragraph E at the end of this document.

4. Florida Power & Light Co.

[Docket No. ER87-413-000]

Take notice that Florida Power & Light Company (FPL) on April 30, 1987, tendered for filing revised Cost Support Schedules C, F and G (together with Cost Support Schedule F Supplement) that support the revised daily capacity charge for sales under Service Schedule B (Short-Term Firm Intechange Service) of FPL's Contracts for Interchange Service with Florida Municipal Power Agency, Florida Power Corporation, Fort Pierce Utilities Authority, City of Gainesville, City of Homestead, Jacksonville Electric Authority, City of Key West, Kissimmee Utility Authority, City of Lakeland, Utilities Commission, City of New Smyrna Beach, Orlando Utilities Commission, City of St. Cloud, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., City of Starke, Tampa Electric Company, and City of Vero Beach; and revised Cost Support Schedules C-S, F-S, and G-S (together with Cost Support Schedule F-S Supplements) that support the revised daily capacity charge for sales under Service Schedule B-S (Short-Term Firm Interchange Service) of FPL's Supplementary Agreement Number One to the Contract for Interchange Service with Seminole Electric Cooperative, Inc. FPL states that the revised capacity charges have been calculated in accordance with the provisions of Service Schedule B and Service Schedule B-S and represent an updating of the currently effective capacity charges to reflect more current costs.

FPL requests an effective date of May 1, 1987, and therefore requests waiver of the Commission's notice requirements.

According to FPL, a copy of this filing was served upon all of the above named parties and the Florida Public Service Commission.

Comment date: May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. The Montana Power Co.

[Docket No. ER87-411-000]

Take notice that on April 30, 1987, The Montana Power Company (Montana Power) tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act its proposed Rate Schedule REC-87, applicable for sales of electricity by MPC for resale to Central Montana Generation and Transmission Cooperative, Inc. (Central Montana) (Rate Schedule FPC No. 39) and Bighorn County Electric Cooperative, Inc. (Bighorn) (Rate Schedule FPC No. 40). This filing has been served upon Bighorn and Central Montana.

Montana Power states that Rate Schedule REC-87 will provide it with an increase in revenues from sales to these customers of $1,995,705 (14%) during the year ending June 30, 1988, and implements the second annual rate increase pursuant to a Settlement Agreement approved in Docket No. ER84-359-000, 31 FERC ¶ 61,060 (1985).

Comment date: May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Co.

[Docket No. ER87-409-000]

Take Notice That on April 30, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to EF Kenilworth, Inc. (EF Kenilworth). The Rate Schedule provides for a monthly transmission service charge of $1.54 per kilowatt plus $.00042 per kilowatthour for the delivey of the net electric power output of EF Kenilworth's qualifying cogeneration facility to be located in the Borough of Kenilworth, Union County, New Jersey to Jersey Central Power and Light Company.

PSE&G requests, with the customer's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon customer and the New Jersey Board of Public Utilities.

Comment date: May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Electric and Gas Co.

[Docket No. ER87-410-000]

Take Notice That on April 30, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to Cogen Technologies NJ Venture (Cogen). The Rate Schedule provides for a monthly transmission service charge of $.73 per kilowatt plus $.00028 per kilowatthour for the delivery of the net electric power output of Cogen's qualifying cogeneration facility to be located in the City of Bayonne, Hudson County, New Jersey to Jersey Central Power and Light Company.

PSE&G requests, with the customer's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon customer and the New Jersey Board of Public Utilities.

Comment date: May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. South Carolina Electric & Gas Co.

[Docket No. ER87-415-000]

Take notice that South Carolina Electric & Gas Company on April 30, 1987 tendered for filing proposed cancellation of Rate Schedule T1.S1.8(FPC) between South Carolina Electric & Gas Company and Central Electric Power Cooperative, Inc.

Under the proposed cancellation, Central Electric Power Cooperative, Inc. has ceased to receive service at its John's Island Delivery Point effective May 15, 1986.

Copies of this filing were served upon Central Electric Power Cooperative, Inc.

Comment date: May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. Applachian Power Co., et al.

[Docket Nos. ER84-579-006 ER86-10-001]

Take notice that, in accordance with ordering Paragraphs (E)(1) and (E)(2) of Opinion No. 266 of the Commission issued March 12, 1987 in Docket Nos. ER84-579-006 and EL86-10-001, American Electric Power Service Corporation (AEPSC) on behalf of its affiliates, Appalachian Power Company (APCO), Columbus and Southern Ohio Electric Company (CSOE), Indiana & Michigan Electric Company (I&ME), Kentucky Power Company (KPCO), and Ohio Power Company (OPCO) tendered for filing on April 27, 1987 a Compliance Filing to the Interconnection Agreement dated July 1, 1951, as amended, (*1951* Agreement) among APCO, CSOE, I&ME, KPCO, OPCO, and AEPSC. The Commission has previously designated the 1951 Agreement as APCO Rate Schedule FERC No. 20, CSOE Rate Schedule FERC No. 30, I&ME Rate Schedule FERC No. 17, KPCO Rate Schedule FERC No. 11, and OPCO Rate Schedule FERC No. 23.

The purpose of the Compliance Filing is to incorporate changes ordered by the Commission in its Opinion No. 266 issued March 12, 1987, regarding the term "affiliate" and a statement that each member shall, to the extent practicable, install or have available to it under contract such capacity as is necessary to supply all of the requirements of its own customers.

Copies of the filing were served upon the public service commissions in the states of Ohio, Kentucky, Indiana, Michigan, Virginia, and West Virginia and all parties.

Comment date: May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-10659 Filed 5-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-695-002, et al.]

River Delta Cogeneration, Ltd., et al. a California Limited Partnership; Small power production and cogeneration facilities; qualifying status; certificate applications, etc.

Comment date: June 10, 1987 in accordance with Standard Paragraph E at the end of this notice.

May 1, 1987.

Take notice that the following filings have been made with the Commission.

1. River Delta Cogeneration, Ltd., a California Limited Partnership

[Docket No. QF85-695-002]

On April 13, 1987, River Delta Cogeneration, Ltd., a California Limited Partnership (Applicant), of P.O. Box 1425, Sonoma, California Limited Partnership (Applicant), of P.O. Box 1425, Sonoma, California 95476, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility was originally certified on August 27, 1986 (Docket Noi. QF85-695-000, 36 FERC ¶ 62,229 (1986)) as a qualifying cogeneration facility providing thermal energy in the form of a heated water/glycol mixture for heating greenhouses owned by Delta Green Ltd.

The application for recertification requests that the above order by amended to include, in addiiton to hot water sales to Delta Green, Ltd., sales solely to Wellhead Electric Company, Inc., or concurrently to both. Wellhead Electric Company, Inc., will use the hot water to operate a brine water concentrator and a salt dryer.

Beechwood Energy Inc.—Reading Anthracite Co.—Beechwood Project

[Docket No. QF86-230-000]

On April 13, 1987 Beechwood Energy, Inc. (Applicant), of 200 Mahantongo Street, Pottsville, Pennsylvania 17901 filed an amendment to the application for certification of facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near the Village of Duncott, Cass Township, Schuylkill

County, Pennsylvania. Applicant originally filed the application for certification of the facility as a qualifying cogeneration facility on November 1, 1985. The thermal energy output of the facility was originally proposed to be utilized in an anthracite silt drying process and for space heating. The amendment of the application proposes that the thermal energy output of the facility will instead be utilized in an affiliated lumber drying kiln. All other details regarding the facility are unchanged.

Northumberland Energy, Inc.—Reading Anthracite Co.—Northumberland Project

[Docket No. QF86-225-000]

On April 13, 1987, Northumberland Energy, Inc. (Applicant), of 200 Mahantongo Street, Pottsville, Pennsylvania 17901 filed an amendment to the application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near the Village of Treverton, Zerby Township, Northumberland County, Pennsylvania. Applicant originally filed the application for certification of the facility as a qualifying cogeneration facility on November 1, 1985. The thermal energy output of the facility was originally proposed to be utilized in an anthracite silt drying process and for space heating. The amendment of the application proposes that the thermal energy output of the facility will instead be utilized in an affiliated eight acre greenhouse. All other details regarding the facility are unchanged.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-10660 Filed 5-8-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36143; FRL-3198-3]

Pesticide Docket Indices; Inclusion on Mailing Lists

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of docket indices for pesticide Registration Standards under development and pesticide Special Reviews, and provides information on how interested persons may request inclusion on an Agency mailing list to receive such indices. Persons may request to be included on the mailing lists for pesticide docket indices at any time.

ADDRESS: Persons wishing to be included on a mailing list to receive docket indices should direct their requests to:

By mail: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, requests may be delivered to: Rm. 246, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Interested persons may contact Franklin D. Rubis (703-557-3262), of the Information Services Section, in Rm., 246 at the above address, for further information on the public dockets, their availability, and the docket indices.

SUPPLEMENTARY INFORMATION: The Agency promulgated final regulations on its Registration Standards and Special Review procedures, which were published in the **Federal Register** of November 27, 1985 (50 FR 48998). Those regulations became effective May 14, 1986. The regulations included provisions for the establishment of a public docket for Registration Standards under development and pending Special Review actions, the maintenance of docket indices, and the establishment of a mailing list of persons wishing to receive the docket indices on a regular basis.

In accordance with § 155.32(d)(2) of the Registration Standard regulations and § 154.15(f)(3) of the Special Review regulations, the Agency has established a mailing list for docket indices. Separate mailing lists are maintained for Registration Standards and Special Reviews. Persons on each mailing list will receive automatically the docket indices (or update to previous indices) for Registration Standards under development or pending Special Reviews. These will be distributed on a monthly or quarterly basis, as required by the regulations. Persons on each mailing list will receive docket indices for all open dockets. Persons will be required to renew their requests for inclusion on the mailing list annually.

Any persons wishing to be included on either mailing list should submit his or her name, affiliation (if any), and mailing address to the address given earlier in this notice. Organizations, groups, and companies are requested not to submit multiple requests under different names, but to desiganate a primary recipient within the organization. This will reduce mailing cost and Agency time in administering the mailing lists.

Dated: May 4, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-10646 Filed 5-8-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59815; (FRL-3195-4]

Rosin Modified Alkyd Resin; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of

one such PMN and provides the summary.

DATE: Close of Review Period: Y 87-143—May 10, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-143

Manufacturer. Confidential.

Chemical. (G) Rosin modified alkyd resin.

Use/Production. (S) Industrial component for industrial primers. Prod. range: 17,400 to 34,900 kg/yr.

Dated: April 24, 1987.

Linda K. Smith,

Acting Division Director, Information Management Division.

[FR Doc. 87-10136 Filed 5-8-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51673; (FRL-3195-6)]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-three such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-992, 87-993, 87-994, 87-995, and 87-996—July 16, 1987

P 87-997, 87-998, and 87-999—July 19, 1987

P 87-1000, 87-1001, 87-1002, 87-1003, 87-1004, 87-1005, 87-1006, 87-1007, 87-1008, 87-1009, 87-1010, 87-1011, and 87-1012—July 20, 1987

P 87-1013, 87-1014, 87-1015, and 87-1016—July 21, 1987

P 87-1017, 87-1018, 87-1019, 87-1020, 87-1021, 87-1022, 87-1023, and 87-1024—July 22, 1987.

Written comments by:

P 87-992, 87-993, 87-994, 87-995, and 87-996—June 15, 1987

P 87-997, 87-998 and 87-999—June 18, 1987

P 87-1000, 87-1001, 87-1002, 87-1003, 87-1004, 87-1005, 87-1006, 87-1007, 87-1008, 87-1009, 87-1010, 87-1011, and 87-1012—June 19, 1987

P 87-1013, 87-1014, 87-1015, and 87-1016—June 20, 1987

P 87-1017, 87-1018, 87-1019, 87-1020, 87-1021, 87-1022, 87-1023, and 87-1024—June 21, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51673]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-992

Manufacturer. Confidential.

Chemical. (G) Monosubstituted phenyl azo disubstituted naphthalenesulfonic acid, salt.

Use/Production. (G) Open, non-dispersive use; destructive use. Prod. range: Confidential.

P 87-993

Manufacturer. Confidential.

Chemical. (G) Heteromonocycle sulfonyl aniline, salt.

Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87-994

Manufacturer. Confidential.

Chemical. (G) Monosubstituted phenylazo disubstituted naphthalene sulfonic acid, salt.

Use/Production. (S) Site-limited isolated intermediate. Prod. range: Confidential.

P 87-995

Manufacturer. Confidential.

Chemical. (G) Monosubstituted phenyl azo disubstituted naphthalenesulfonic acid, substituted alkylamine salt.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-996

Importer. Confidential.

Chemical. (G) Modified rapeseed oil.

Use/Import. (S) Industrial dimensional stability providing plasticizer for rubber mixtures. Import range: Confidential.

P 87-997

Manufacturer. Uniroyal Chemical Company, Incorporated.

Chemical. (G) Polyether prepolymer, TDI terminated.

Use/Production. (G) Contained use. Prod. range: Confidential.

P 87-998

Manufacturer. Confidential.

Chemical. (G) Mixed alkylmetallic mercaptoester sulfides.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-999

Manufacturer. Confidential.

Chemical. (G) Saturated polyester resin.

Use/Production. (S) Industrial component for baking enamels on metal. Prod. range: 44,000 to 87,000 kg/yr.

P 87-1000

Manufacturer. Confidential.

Chemical. (G) Urethane acrylate with pendant carboxy groups.

Use/Production. (G) U.V. curable conformal coatings. Prod. range: Confidential.

P 87-1001

Manfacturer. Southland Corporation.

Chemical. (G) Vegetable oil, sulfated, neutralized.

Use/Production. (S) Industrial emulsifier—wetting agent. Prod. range: 5,000 to 20,000 kg/yr.

P 87-1002

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyether polyurethane polymer.

Use/Production. (S) Industrial polyurethane elastomers. Prod. range: Confidential.

P 87–1003

Manufacturer. Reichhold Chemicals Incorporated.

Chemical. (G) Tall oil fatty acid alkyd resin.

Use/Production. (S) Industrial coating vehicle. Prod. range: Confidential.

P 87–1004

Importer. Confidential.

Chemical. (G) Sulfonated aromatic polymer.

Use/Import. (S) Industrial dispersing agent for disperse-dyestuffs. Import range: Confidential.

P 87–1005

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyether polyurethane polymer.

Use/Production. (S) Industrial polyurethane elastomers. Prod. range: Confidential.

P 87–1006

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyether polyurethane polymer.

Use/Production. (S) Industrial polyurethane foams. Prod. range: Confidential.

P 87–1007

Manufacturer. The Dow Chemical Company.

Chemical. (G) Polyether polyurethane polymer.

Use/Production. (S) Industrial polyurethane elastomers. Prod. range: Confidential.

P 87–1008

Importer. Sherex Chemical Company, Inc.

Chemical. (G) Branched fatty alcohols.

Use/Import. (S) Industrial ingredient in personal care formulations and lubricants. Prod. range: Confidential.

P 87–1009

Manufacturer. Hoechst Celanese Corporation.

Chemical. (S) 2-Pyrazole, 3-(p-chlorophenyl)-1-[p-(N,N-dimethyltauryl) phenyl]-formate salt.

Use/Production. (S) Industrial optical brightening agent for acrylic fibers. Prod. range: 8,000 to 15,000 kg/yr.

P 87–1010

Importer. Hoechst Celanese Corporation.

Chemical. (S) 2-Pyrazoline, 3-(p-chlorophenyl)-1-[p-(N,N-dimethyltauryl)phenyl]-.

Use/Import. (S) Industrial optical brightening agent for acrylic fibers. Import range: 1,500 to 2,500 kg/yr.

P 87–1011

Manufacturer. Mazer Chemicals, Incorporated.

Chemical. (G) Organic esters.

Use/Production. (G) Metal working lubricant/coolant component. Prod. range: Confidential.

P 87–1012

Manufacturer. Confidential.

Chemical. (S) Carbamic acid, [1-methyl-1-(3-(1-methyl ethenyl) phenyl)ethyl) -2,2,2-trifluoroethylester.

Use/Production. (S) Used in the polymer form for industrial coating. Prod. range: 10,000 to 150,000 kg/yr.

P 87–1013

Manufacturer. Surfactant Technologies Corporation.

Chemical. (G) Poly carboxamide.

Use/Production. (S) Industrial function: corrosion inhibitor and paint adhesion promoter; application: to replace chromate ion in phosphatizing. Function: rust inhibitor; application: in metal working fluids and coolants. Prod. range: Confidential.

P 87–1014

Manufacturer. PPG Industries, Incorporated.

Chemical. (G) Styrenated acrylate methacrylate acrylic polymer.

Use/Production. (G) Industrially used coating with a dispersive use. Prod. range: 25,900 to 75,000 kg/yr.

P 87–1015

Manufacturer. Mazer Chemicals, Incorporated.

Chemical. (G) Organic esters.

Use/Production. (G) Metalworking lubricant/coolant component. Prod. range: Confidential.

P 87–1016

Manufacturer. Confidential.

Chemical. (G) Partial metal complex of aminoethylene phosphonic acid, reaction products with potassium hydroxide.

Use/Production. (G) Industrial cooling water treatment, open dispersive use. Prod. range: Confidential.

P 87–1017

Manufacturer. Lilly Industrial Coatings, Incorporated.

Chemical. (G) Polymer of benzenedicarboxylic acid, cycloaliphatic diol, alkanedioic acid, alkane diol, alkane triol, and fatty acids.

Use/Production. (G) Industrial liquid paints. Prod. range: 700,000 to 1,000,000 kg/yr.

P 87–1018

Manufacturer. Lilly Industrial Coatings, Incorporated.

Chemical. (G) Polymer of benzenedicarboxylic acid cycloaliphatic diol, hexanedioc acid, alkane diols, aromatic anhydride.

Use/Production. (G) Industrial liquid paints. Prod. range: 600,000 to 900,000 kg/yr.

P 87–1019

Importer. Confidential.

Chemical. (G) Modified polyurethane polyacrylate.

Use/Import. (G) Industrial coating polymer. Import range: 67,000 to 400,000 kg/yr.

P 87–1020

Manufacturer. Confidential.

Chemical. (G) Polyurethane polyurea.

Use/Production. (G) Dispersively used industrial coating. Prod. range: 10,000 to 189,000 kg/yr.

P 87–1021

Importer. Confidential.

Chemical. (G) Styrenated methacrylate polymer.

Use/Import. (S) Site-limited chemical intermediate. Import range: 64,650 to 386,000 kg/yr.

P 87–1022

Manufacturer. Confidential.

Chemical. (G) Alicyclic aliphatic polyester.

Use/Production. (G) Industrially used coating with a dispersive use. Prod. range: 10,000 to 150,000 kg/yr.

P 87–1023

Manufacturer. Confidential.

Chemical. (G) Epoxy modified chlorinated hydrocarbon.

Use/Production. (G) Dispersively used industrial coating. Prod. range: 14,000 to 27,000 kg/yr.

P 87–1024

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylate methacrylate.

Use/Production. (G) Dispersively used automotive coatings. Prod. range: 95,000 to 270,000 kg/yr.

Dated: April 27, 1987.

Linda K. Smith,

Acting Division Director, Information Management Division.

[FR Doc. 87-10137 Filed 5-8-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51672; (FRL-3195-5)]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-nine such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-962, 87-963, 87-964, and 87-965—July 9, 1987

P 87-966, 87-967, 87-968, 87-969, 87-971, 87-972, 87-973, 87-974, and 87-975—July 12, 1987

P 87-976, 87-977, 87-978, 87-979, 87-980, 87-981, 87-982, 87-983, 87-984, 87-985, and 87-986—July 14, 1987

P 87-987, 87-988, 87-989, 87-990, and 87-991—July 15, 1987.

Written comments by:

P 87-962, 87-963, 87-964, and 87-965—June 8, 1987

P 87-966, 87-967, 87-968, 87-969, 87-971, 87-972, 87-973, 87-974, and 87-975—June 11, 1987

P 87-976, 87-977, 87-978, 87-979, 87-980, 87-981, 87-982, 87-983, 87-984, 87-985, and 87-986—June 13, 1987

P 87-987, 87-988, 87-989, 87-990, and 87-991—June 14, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51672]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-962

Importer. Toyo Soda USA Incorporated.

Chemical. (G) Piperazine derivative containing a hydroxyl group.

Use/Import. (S) Industrial tertiary amine catalyst for the production of polyurethane foam. Import range: 1,000 to 5,000 kg/yr.

P 87-963

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (S) Methacryloxypropyltris(trimethylsiloxy) silane.

Use/Production. (S) Industrial reactive monomer for coatings, films and membranes. Prod. range: Confidential.

P 87-964

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (S) (2,2-dimethylbutyl)dimethylchlorosilane.

Use/Production. (S) Industrial synthetic chemical intermediate for sales to chemical and pharmaceutical industries. Prod. range: Confidential.

P 87-965

Importer. Confidential.

Chemical. (G) Substituted phosphonic acid derivative.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. Acute oral: .72 g/kg; Irritation: Skin—Irritant; Eye—Irritant.

P 87-966

Manufacturer. Confidential.

Chemical. (G) Polymethylene polyphenyl isocyanate prepolymer.

Use/Production. (S) Industrial component for foam seating. Prod. range: 45,455 to 136,364 kg/yr.

P 87-967

Manufacturer. Dynamit Nobel Chemicals.

Chemical. (S) Aminopropyldimethyl terminated polydimethylsiloxane

Use/Production. (G) Contained use in an article. Prod. range: Confidential.

P 87-968

Manufacturer. NL Industries, Incorporated.

Chemical. (G) Water-dispersible polyamide resin.

Use/Production. (G) Open, non-dispersive manner. Prod. range: Confidential.

P 87-969

Manufacturer. NL Industries, Incorported.

Chemical. (G) Water-dispersible polyamide resin.

Use/Production. (G) Open, non-dispersive manner. Prod. range: Confidential.

P 87-971

Importer. Hoechst Celanese Corporation.

Chemical. (S) Fatty acid-N-methyl taurine, sodium salt.

Use/Import. (S) Industrial dispersing agent in textile dying. Import range: 4,000 to 8,000 kg/yr.

P 87-972

Manufacturer. Confidential.

Chemical. (G) Waterborne urethane-acrylic copolymer.

Use/Production. (S) Industrial, commercial and consumer general purpose coating and modifier for coatings, inks and adhesives. Prod. range: Confidential.

P 87-973

Importer. Confidential.

Chemical. (G) Substituted-substituted-naphthalenedisulfonic acid, salts.

Use/Import. (S) Industrial textile colorant. Import range: Confidential.

Toxicity Data. Acute oral >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Ames test: Non-mutagenic.

P 87-974

Manufacturer. Confidential.

Chemical. (G) Polyisocyanate(aliphatic) and a polyamine(aliphatic) condensate.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87-975

Manufacturer. Owens-Corning Fiberglas Corporation.

Chemical. (G) Amine modified polyester polyol.

Use/Production. (S) Industrial molding resin. Prod. range: Confidential.

P 87-976

Importer. Confidential.

Chemical. (G) Dihydroxyalkane.

Use/Import. (G) Additive for colorants. Import range: Confidential.

Toxicity Data. Acute oral: >4,640 mg/kg; Irritation: Skin—Non- irritant, Eye—Moderate.

P 87-977

Importer. Confidential.
Chemical. (G) Modified acrylic acid-styrene copolymer.
Use/Import. (G) Surfactant. Import range: Confidential.

P 87-978

Manufacturer. Reichhold Chemicals, Incorporated.
Chemical. (G) Tall oil fatty acid alkyd resin.
Use/Production. (S) Industrial coating vehicle. Prod. range: Confidential.

P 87-979

Manufacturer. Confidential.
Chemical. (S) 2-(hexadecylthio)-3-methylbutanoic acid.
Use/Production. (G) Chemical intermediate. Prod. range: 1,500 to 48,000 kg/yr.

P 87-980

Manufacturer. Confidential.
Chemical. (G) Substituted thioxotetrazole.
Use/Production. (G) Chemical intermediate. Prod. range: 2,200 to 4,500 kg/yr.

P 87-981

Manufacturer. Confidential.
Chemical. (G) 2-hexadecylsulfonyl-3-methylbutanoic acid.
Use/Production. (G) Chemical intermediate. Prod. range: 1,500 to 48,000 kg/yr.

P 87-982

Importer. Sherex Chemical Company, Inc.
Chemical. (G) Branched fatty alcohols.
Use/Import. (S) Industrial Ingredients in personal care formulations and lubricants. Import range: Confidential.

P 87-983

Manufacturer. NL Industries Incorporated.
Chemical. (G) Water-dispersible polyamide resin.
Use/Production. (G) Open, non-dispersive manner. Prod. range: Confidential.

P 87-984

Manufacturer. CIBA-GEIGY Corporation.
Chemical. (G) Bisphenol a epoxy resin.
Use/Production. (S) Industrial maintenance coatings; container and coil coating resins; automotive coatings resin; and resin for product finishing applications.

P 87-985

Manufacturer. Confidential.
Chemical. (G) Saturated polyester platicizer.
Use/Production. (G) Plasticer for protective coatings. Prod. range: Confidential.

P 87-986

Manufacturer. NL Industries Incorporated.
Chemical. (G) Water-dispersible polyamide resin.
Use/Production. (G) Open, non-dispersive manner. Prod. range: Confidential.

P 87-987

Manufacturer. Confidential.
Chemical. (G) N-12-propyl/styrylnitrone.
Use/Production. (G) Destructive use-material will be used in semiconductor manufacturing. Prod. range: Confidential.
Toxicity Data. Acute oral: 1,184 mg/kg; Acute dermal: >2,000; Irritation: Skin—Non-irritant, Eye—Moderate; Ames test: Non-mutagenic.

P 87-988

Manufacturer. Confidential.
Chemical. (G) Neutralized phosphate ester.
Use/Production. (S) Industrial surfactant. Prod. range: Confidential.

P 87-989

Manufacturer. Biddle Sawyer Corporation.
Chemical. (G) Cuprate, [[hydroxy-[[hydroxy-substituted-[[(sulfooxy) ethyl]sulfonyl]phenyl]azo]substituted-naphthenyl]azo]-oxo-(sulfophenyl)-1H-pyrazole-carboxylato]-, sodium salt.
Use/Production. (S) Reactive dye for textiles. Prod. range: 40,000 kg/yr.

P 87-990

Manufacturer. Confidential.
Chemical. (G) Chain stopped short oil soya alkyd.
Use/Production. (S) Industrial high solids protective coating. Prod. range: 45,000 to 60,000 kg/yr.

P 87-991

Manufacturer. E.I. du Pont de Nemours & Company, Inc.
Chemical. (G) Amine epoxy adduct salt.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Dated: April 22, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87-10138 Filed 5-8-87; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection; Submission to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of information collection: Securities of Insured State Nonmember Banks (OMB No. 3064-0030).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35,), the FDIC hereby gives notice that it has submitted to the Office of Mangement and Budget a request for OMB review for the information collection system identified above.

Address: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before May 26, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is requesting OMB approval for a three-year extension of the expiration date of the reporting requirements for insured State nonmember banks and certain bank securities shareholders that are subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended. The reporting requirements are fully described in FDIC regulation 12 CFR Part 335. The periodic reporting from each bank consists of narrative comments, financial statements and other financial data that provide an ongoing, publicly available record of a bank's activities and results of operations. Other individual respondents provide information related

to their transactions in and ownership of the bank's own securities. The information required to be reported and disclosed by respondents is deemed necessary for actual and potential investors making investment decisions concerning securities issued by respondent banks. It is estimated that these requirements impose an annual reporting burden of 53,276 hours, collectively, on the respondents.

Dated: May 6, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-10639 Filed 5-8-87; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-003829-002.

Title: New Orleans Terminal Agreement.

Parties: Board of Commissioners of the Port of New Orleans, Baton Rouge Marine Contractors, Inc.

Synopsis: The proposed amendment would change the rental basis on which the parties have been fucntioning.

Filing Party: J. Michael Orlesh, Jr., Director of Port Operations, Port of New Orleans, Post Office Box 60046, New Orleans, LA 70160.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 6, 1987.

[FR Doc. 87-10676 Filed 5-8-87; 8:45 am]

BILLING CODE 6730-01

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.:206-010694-005.

Title: Trans-Atlantic Conferences.

Parties: North Europe-U.S. Atlantic Conference; U.S. Atlantic-North Europe Conference.

Synopsis: The proposed amendment would republish the agreement in its entirety and make certain nonsubstantive changes to the language of the agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 6, 1987.

[FR Doc. 87-10675 Filed 5-8-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

May 5, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

Proposal To Approve Under OMB Delegated Authority the Extension With Revision of the Following Report

1. Report title: Reports of Financial Condition of Primary Dealers in U.S. Government Securities

Agency form number: FR 2002–3
OMB Docket number: 7100–0010
Frequency: monthly and annual
Reporters: Primary Dealers in U.S. Government Securities
Annual reporting hours: 3076 hours
Small businesses are not affected.

General description of report:

The reporting framework for primary dealers in U.S. Government Securities is proposed to be revised. Under this proposal, two existing reporting forms filed by bank dealers (FR 2002) and nonbank dealers (FR 2003) would be discontinued and replaced with a requirement that dealers file: (1) a Primary Dealer Profit Center (PDPC) Report numbered FR 2002 and (2) copies of specified reports prepared by dealers for other purposes, i.e., for regulatory, internal management, or audit purposes. The PDPC report collects income and expense data, by profit center unit, from bank and nonbank primary dealers in U.S. Government Securities, to provide information on the firm's activities in the markets for Treasury and agency securities, mortgage-backed securities, private money-market instruments, and related arbitrage and financing activities. These data and the supplementary reports to be filed are required to assist the Federal Reserve in connection with its reposibilities for the conduct of monetary policy and in evaluating the Government Securities market.

This information collection is mandatory [12 U.S.C. 248(a)(2), 353–359a, and 391] and is given confidential treatment [5 U.S.C. 552(b)(4)(4)].

Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report

2. Report title: Mortgage Loan Disclosure Statement
Agency form number: FR HMDA–1
OMB Docket Number: 7100–0090
Frequency: annual
Reporters: State member banks
Annual reporting hours: 8790 hours
Small businesses are not affected.

General description of report:

This form collects data from state member banks under the Home Mortgage Disclosure Act, 12 U.S.C. 2801–2811 (HMDA), as implemented by the Board's Regulation C, 12 CFR 203. The Act requires depository institutions to make annual disclosures that show a geographic breakdown of their mortgage loans for the purchase or improvement of residential property.

This information collection is mandatory [12 U.S.C. 2801–2811], and is not given confidential treatment.

Board of Governors of the Federal Reserve System, May 5, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–10625 Filed 5–8–87; 8:45 am]

BILLING CODE 6210–01–M

Capitalbanc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulations Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in secion 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written pesentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 1, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *CapitalBanc Corporation*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Capital National Bank, New York, New York. Comments on this application must be received by June 4, 1987.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Trustcorp, Inc.*, Toledo, Ohio; to acquire 100 percent of the voting shares of The Citizens Bancorp, Inc., Hartford City, Indiana, and thereby indirectly acquire The Citizens State Bank of Hartford City, Hartford City, Indiana.

2. *Trustcorp, Inc.*, Toledo, Ohio; to acquire 100 percent of the voting shares of First State Bancorp, Dunkirk, Indiana, and thereby indirectly acquire First State Bank of Dunkirk, Dunkirk, Indiana.

3. *Trustcorp, Inc.*, Toledo, Ohio; to acquire 100 percent of the voting shares of Midwest Bancorp, Inc., Columbus, Indiana, and thereby indirectly acquire First National Bank of Columbus, Columbus, Indiana.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Shelard Bancshares, Inc., St. Louis Park, Minnesota, and thereby indirectly acquire Shelard National Bank, St. Louis Park, Minnesota, and Shelard National Bank of Eagan, Eagan, Minnesota.

D. **Federal Reserve Bank of of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Dodge City Bancshares, Inc.*, Dodge City, Kansas; to acquire 96 percent of the voting shares of Metro Bancshares, Inc., Broken Arrow, Oklahoma, and thereby indirectly acquire metro Bank of Broken Arrow, Broken Arrow, Oklahoma. Comments on this application must be received by May 26, 1987.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Alvarado Bancshares, Inc.*, Alvarado, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Alvarado National Bank, Alvarado, Texas. Comments on this application must be received by June 4, 1987.

Board of Governors of the Federal Reserve System, May 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–10626 Filed 5–8–87; 8:45 am]

BILLING CODE 6210–01–M

Illini Community Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to engage *de novo* through its subsidiary, Illini & Associates, Inc., Springfield, Illinois, in management consulting advice, auditing, accounting, and tax services to nonaffiliated and nonbank depository organizations pursuant to § 225.25(b)(11) of the Board's Regulation Y.

2. *Valley Bancorporation*, Appleton, Wisconsin; to engage *de novo* in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 5, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-10624 Filed 5-8-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82D-0350]

General Principles of Process Validation; Availability of Current Good Manufacturing Practice Final Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guideline entitled "Guideline on General Principles of Process Validation," which outlines general principles of process validation the agency views as acceptable elements of a process validation program for preparing human and animal drug products and medical devices. The final guideline is intended to inform interested persons of these acceptable principles to facilitate compliance with the current good manufacturing practice (CGMP) regulations and to help assure the quality of human and animal drug products and medical devices.

ADDRESS: Written requests for single copies of the final guidelines and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT:

For Human and Animal Drug Products: Paul J. Motise, Center for Drugs and Biologics (HFN-323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8089.

For Medical Devices: Edward J. McDonnell, Center for Devices and Radiological Health (HFZ-330), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7122.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 29, 1983 (48 FR 13096), FDA issued a notice announcing the availability of a draft guideline entitled "Guideline on General Principles of Process Validation" (March 1983). The draft guideline was intended to inform interested persons of acceptable principles to facilitate compliance with the CGMP regulations. The draft guideline was made available for public comment to provide the agency with views to be considered in its development of a final guideline. Interested persons were given until May 31, 1983, to comment on the draft guideline.

Based on a request for a general extension of the comment period by a foreign drug manufacturer, FDA issued a notice in the **Federal Register** of June 10, 1983 (48 FR 26889), extending the comment period for the draft guideline until July 31, 1983.

In a notice published in the **Federal Register** of February 22, 1984 (49 FR 6572), FDA announced that an open public meeting of the Device Good Manufacturing Practice Advisory Committee would be held on March 29 and 30, 1984, in Washington, DC. This notice also announced that the meeting agenda would include an open discussion of the March 1983 draft guideline. On March 29, 1984, during the open committee discussion portion of the meeting, an FDA speaker discussed the comments received on the March 1983 draft guideline and proposed revisions under consideration by the agency. Copies of a working draft of the March 1983 guideline that reflected the proposed revisions under consideration by the agency were provided to interested persons attending the public meeting.

To assure that the full range of issues related to the March 1983 draft guideline were addressed, FDA issued a notice in the **Federal Register** of July 19, 1984 (49 FR 29272), corrected in the **Federal Register** of August 6, 1984 (49 FR 31341), announcing the availability of the working draft of the 1983 draft guideline entitled: "Guideline on General Principles of Process Validation" (March 1984). FDA notified that the working draft guideline did not supersede the March 1983 draft guideline and that additional comments to the March 1983 draft guideline could be submitted, if desired. Interested persons were given until October 17, 1984, to comment on the working draft guideline.

A total of 66 comments were received in response to all notices. The comments came from domestic and foreign drug and medical device manufacturers, industry trade associations, the National Aeronautics and Space Administration, and a drug industry consultant. The draft guideline has been revised as a result of these comments. The comments are on file with the Dockets Management Branch (address above) under Docket No. 82D-0350.

This notice and the final guideline are issued under 21 CFR 10.90(b), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. The agency advises that this

final guideline complies with the requirements of the CGMP regulations and may be relied upon by manufacturers of human and animal drug products and medical devices to meet those regulations. A person may also choose to use alternate procedures even though they are not provided for in the guideline. If a person chooses to depart from the practices and procedures set forth in the final guideline, that person may discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable by FDA.

Interested persons may submit written comments on the final guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining the future need for amending the final guideline. Two copies of comments should be submitted, exceptr that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The final guideline and received comments may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of the final guidelines should be sent to the Dockets Management Branch.

Dated: May 1, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–10617 Filed 5–8–87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions and Delegations of Authority; Amendment

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register** Vol. 51, No. 138, pg. 26062, dated Friday, July 18, 1986) is amended to update the functional statement for the Division of Methods and Procedures, Office of Financial Management within the Office of Prepaid Health Care.

The specific change to Part F. is as follows:

• FC.20.D.1., Division of Methods and Procedures (FCC1), is deleted in its entirety and replaced by an updated functional statement to read as follows:

1. Division of Methods and Procedures (FCC1)

Responsible for establishing national operational policies, procedures, operating instructions, systems specifications, data exchange, and reimbursement mechanisms which define and systematize the Medicare prepaid health plan enrollment, disenrollment, and payment processes. Responsibilities include developing, implementing, and maintaining the methods and procedures for interfacing prepaid health plan operations (including health maintenance organizations (HMOs)/competitive medical plans (CMPs), health care prepayment plans (HCPPs), and any capitation demonstration projects) with the non-prepaid Medicare health insurance systems. Formulates systems requirements, defines data base files, and develops procedures for prepaid health care data exchange and reimbursement mechanisms. Develops and maintains instructions in various national manuals used by the prepaid plans, regional offices, intermediaries, and carriers regarding the prepaid health care information system. Evaluates the effectiveness of the prepaid plan information system, and recommends changes and improvements. Renders technical assistance to prepaid health plans and regional offices concerning methods and procedures. Serves as HCFA's focal point for prepaid health plan enrollment/disenrollment, and payment operational issues and interim reimbursement.

Dated: April 28, 1987.

Bartlett S. Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 87–10684 Filed 5–8–87; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Acquired Immune Deficiency Syndrome (AIDS); Regional Education and Training Centers; Extension of Application Due Date

AGENCY: Health Resources and Services Administration, Public Health Service, Department of Health and Human Services.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the application due date for AIDS Regional Education and Training Centers previously published in the **Federal Register** April 20, 1987 (52 FR 12979). The application due date is extended to July 6, 1987. The application deadline is being extended because of a delay in the availability of application materials. The address where completed applications are to be mailed remains the same as the address published in the April 20, 1987 **Federal Register** (52 FR 12979).

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87–10648 Filed 5–8–87; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Acquired Immune Deficiency Syndrome; Service Demonstration Program Grants

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Resources Development (BRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1987 funds are available for Service Demonstration grants to develop projects demonstrating a comprehensive, cost effective, ambulatory and community-based health and support system for persons with Acquired Immune Deficiency Syndrome (AIDS), AIDS-related conditions/complex (ARC), and Human Immunodeficiency Virus (HIV) infection. Applicants will be expected to demonstrate a thorough understanding of the incidence of AIDS, ARC, and HIV infection, the need and demand for services, and a realistic plan for providing the most needed services, including public education and prevention services.

Supplemental grant applications from the four current AIDS Service Demonstration Program grantees in the New York, Los Angeles, Miami, and San Francisco, Standard Statistical Areas (SMSAs) are now being accepted. Additionally, new grant applicants from the next 21 SMSAs with the greatest number of AIDS cases as reported by the Centers for Disease Control (CDC) as of March 9, 1987, are eligible to compete for up to eight new grants. (See Appendix A).

Funds were approved by Pub. L. 99–591 for this purpose under the authority of Section 301 of the Public Health Service (PHS) Act (432 U.S.C. 241).

DATE: To receive consideration, supplemental grant applications from the current grantees must be received by the close of business June 10, 1987 by the

Grants Management Officer at the address below. Applications for new grants must be received by the Grants Management Officer by the close of business July 10, 1987. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Mr. Joseph Baldi, Chief, AIDS Service Demonstration Program, Office of AIDS Services Program, Room 9–21, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443–6745). Grant application kits (Standard Form 424 approved under OMB Number 0342–0006) and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from Mr. Donald C. Parks, Grants Management Officer, Bureau of Resources Development, Parklawn Building, Room 9–03, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443–2630). The original and two copies of the application must be submitted to Mr. Parks.

SUPPLEMENTARY INFORMATION:

Program Objectives

The AIDS Service Demonstration Program is intended to support the development and demonstration of systems of care which provide the spectrum of needed services for people with HIV infection and its complications, and provide appropriate alternatives to inpatient hospital care.

Such systems must be developed in response to a careful assessment of the community's needs and must assure the coordination of the community's health care resources. Projects should propose innovative, cost effective means of providing services, and should contain specific mechanisms to reduce the need for inpatient hospital care and to link together community health resources.

Because of the demonstration nature of the program, emphasis should be placed on how the program can operate self sufficiently 3 years after initial Federal funding and on how the proposed project might serve as a model for other communities with significant numbers of persons with HIV infection and AIDS. Since a disproportionate number of persons with AIDS and HIV infection are from minority populations, particular attention should be placed on developing appropriate outreach, information and education strategies, and arranging for services so that cultural and language differences are taken into consideration.

Availability of Funds

A total of $10,000,000 is available in FY for the AIDS Service Demonstration Program. Up to $3,500,000 is available to the four grantees funded in FY 1986 in the New York, San Francisco, Los Angeles and Miami SMSAs for expenditure over a three year period. This requires submission of a budget for each of the three years. These funds will be competitively awarded to the grantees who best demonstrate the need for additional program services or other comprehensive programmatic objectives in keeping with the goals of the AIDS Service Demonstration Program.

A minimum of $6,250,000 is available for new competitive grant awards to applicants from 21 additional SMSAs who reported 160 or more cases of AIDS to the Centers for Disease Control as of March 9, 1987 (1986 grantees are not eligible for these funds). Not more than one grant award will be made in any one SMSA. The project period will be for three years. The FY 1987 grants will be available for expenditure over a three year period. This requires submission of a budget for each of the three years.

Up to $250,000 will be set aside to conduct an evaluation of the AIDS Service Demonstration Program.

Eligible Applicants

Existing grantees in the first four SMSAs listed in Appendix B are eligible to apply for supplemental grants. All public and private entities, non-profit and for-profit, located in and providing services to the additional 21 SMSAs described earlier in this text and listed in Appendix B are eligible to apply for new grants. Eligible entities may include, but are not limited to, State or local health departments; public or private hospitals; and consortia of health care and community organizations which can develop a comprehensive ambulatory, community and home-based AIDS support program offering appropriate, compassionate care at reduced costs.

Collaboration/Coordination With Other AIDS Programs

To the maximum extent possible, the grantees will be expected to work closely with the Robert Wood Johnson Foundation AIDS Health Services Program grantees; the AIDS Community Outreach Demonstration Project supported by the National Institute on Drug Abuse; information, public education/prevention and testing programs supported by the Centers for Disease Control; the drug clinical trial studies and other research programs conducted by the National Institutes of Health, and the Community Health Centers and Migrant Health Centers supported by HRSA.

Review and Evaluation Criteria for New SMSA Applicants

Applications for the new FY 1987 grants will be reviewed and rated by an objective review committee according to the applicant's ability to demonstrate a thorough understanding of AIDS and the HIV epidemic, the need and demand for ambulatory, community and home-based services, including education and prevention services for individuals with high risk behavior, and the experience and potential to provide treatment and support to the largest number of AIDS, ARC, and HIV infected patients within the eligible SMSAs at the least cost. Specific attention must be given to assuring comprehensiveness and appropriateness of services, and access to all segments of the affected population. Where appropriate, contiguous communities should undertake cooperative regional systems of care in order that duplication of services can be avoided. More detailed information on the review and evaluation criteria may be found in the grant application kit.

Review and Evaluation Criteria for FY 1986 Grantees

Grantees from the SMSAs of New York, San Francisco, Los Angeles, and Miami will compete for available funds through a limited application and review process. Grantees must submit an abbreviated application, not to exceed 20 pages, identifying additional priority services, including education and prevention services for individuals with high risk behavior, and/or other geographic area to be served within the SMSA. Instructions on the abbreviated application will be included in the grant application kit.

Allowable Costs

A successful applicant under this notice must spend funds it receives according to the approved application and budget; the authorizing legislation; terms and conditions of the grant award; the regulations of the Department and the PHS applicable to grants; the cost principles specified in 45 CFR 74, Subpart Q; the applicable Office of

Management and Budget (OMB) circular for non-profit grantees; and Appendix VI of the PHS grants policy statement applicable to for-profit organizations.

Other Award Information

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance.

Excecutive Order 12372

The AIDS Service Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalogue of Federal Domestic Assistance number for the AIDS Service Demonstration Program is 13.333.

Dated: March 24, 1987.

David N. Sundwall,

Administrator.

APPENDIX A.—STANDARD METROPOLITAN STATISTICAL AREAS (SMSAs) ELIGIBLE TO COMPETE FOR FY 1987 AIDS SERVICE DEMONSTRATION PROGRAM FUNDS

SMSAs [1]	Population [1] (in millions)	Number of AIDS cases [2]
Supplemental:		
1. New York, NY-NJ	9.1	9,046
2. San Francisco-Oakland, CA	3.3	3,140
3. Los Angeles-Long Beach, CA	7.5	2,722
4. Miami, FL	1.6	952
New:		
5. Houston, TX	2.9	1,036
6. Washington, D.C.-MD-VA	3.1	923
7. Newark, NJ	2.0	775
8. Chicago, IL	7.1	682
9. Philadelphia, PA-NJ	4.7	577
10. Atlanta, GA	2.0	503
11. Dallas-Fort Worth, TX	3.0	588
12. Boston, MA	2.8	476
13. Nassau-Suffolk, NY	2.6	384
14. Ft. Lauderdale-Hollywood, FL	1.0	359
15, Jersey City, NJ	.6	348
16. Seattle-Everett, WA	1.6	304
17. San Diego, CA	1.9	298
18. Denver-Boulder, CO	1.6	283
19. New Orleans, LA	1.2	281
20. Baltimore, MD	2.2	262
21. West Palm Beach-Boca Raton, FL	.6	233
22. San Juan, PR	1.1	200
23. Detroit, MI	4.4	194
24. Anaheim-Santa Ana-Garden Grove, CA	1.9	189
25. Patterson-Clifton-Passaic, NJ	.5	160

[1] Characteristics of the Population, Number of Inhabitants, 1980 Census of Population, U.S. Department of Commerce, Bureau of the Census.

[2] Number of cases of AIDS reported to the Centers for Disease Control as of 3/9/87.

Appendix B—Standard Metropolitan Statistical Areas Eligible for Funding Under the AIDS Service Demonstration Program

SMSA	Cities and Counties included in the SMSA
1. New York, NY-NJ	NY New York City Bronx Count Kings County New York County Putnam County Queens County Richmond County Rockland County Westchester County NJ Bergen County
2. San Francisco-Oakland, CA.	San Francisco City Oakland City Alameda County Contra Costa County Mann County San Francisco County San Mateo County
3. Los Angeles-Long Beach, CA.	Los Angeles City Long Beach City Los Angeles County
4. Miami, FL	Miami City Dade County
5. Houston, TX	Houston City Brazoria County Fort Bend County Harris County Liberty County Montgomery County Waller County
6. Washington, DC-MD-VA	Washington, DC MD Charles County Montgomery County Prince Georges County VA Arlington County Fairfax County Loudon County Prince William County Alexandria City Fairfax City Falls Church City Manassas City Manassas Park City
7. Newark, NJ	Newark City Essex County Morris County Somerset County Union County
8. Chicago, IL	Chicago City Cook County DuPage County Kane County Lake County McHenry County Will County
9. Philadelphia, PA-NJ	PA Philadelphia Bucks County Chester County Delaware County Montgomery County Philadelphia County NJ Burlington County Camden County Gloucester County
10. Atlanta, GA	Atlanta City Butts County Cherokee County Clayton County Cobb County DeKalb County Douglas County Fayette County Forsyth County Fulton County Gwinnett County Henry County Newton County Paulding County Rockdale County Walton County
11. Dallas-Fort Worth, TX.	Dallas City Fort Worth City Collin County Dallas County Denton County Ellis County Hood County Johnson County Kaufman County Parker County Rockwall County Tarrant County Wise County
12. Boston, MA	Boston City Essex County Beverly City Boxford Town Danvers Town Hamilton Town Lynn City Lynnfield Town Manchester Town Marblehead Town MiddletonTown Nahant Town Peabody City Salem City Saugus Town Swampscott Town Topsfield Town Wenham Town Middlesex County Acton Town Arlington Town Ashland Town Bedford Town Belmont Town

SMSA	Cities and Counties included in the SMSA
	Boxborough Town
	Burlington Town
	Cambridge City
	Carlisle Town
	Concord Town
	Everett City
	Framingham Town
	Holliston Town
	Lexington Town
	Lincoln Town
	Malden City
	Medford City
	Melrose City
	Natick Town
	Newton City
	North Reading Town
	Reading Town
	Sherborn Town
	Somerville City
	Stoneham Town
	Sudbury Town
	Wakefield Town
	Waltham City
	Watertown Town
	Wayland Town
	Weston Town
	Wilmington Town
	Winchester Town
	Woburn City
	Norfolk County
	Bellingham Town
	Braintree Town
	Brookline Town
	Canton Town
	Cohasset Town
	Dedham Town
	Dover Town
	Foxborough Town
	Franklin Town
	Holbrook Town
	Medfield Town
	Medway Town
	Millis Town
	Milton Town
	Needham Town
	Norfolk Town
	Norwood Town
	Quincy City
	Randolph Town
	Sharon Town
	Stoughton Town
	Walpole Town
	Wellesley Town
	Westwood Town
	Weymouth Town
	Wrentham Town
	Plymouth County
	Abington Town
	Duxbury Town
	Hanover Town
	Hanson town
	Hingham Town
	Hull Town
	Kingston, Town
	Marshfield Town
	Norwell Town
	Pembroke Town
	Rockland Town
	Scituate Town
	Suffolk County
	Boston City
	Chelsea City
	Revere City
	Winthrop Town
13. Nassau-Suffolk, NY	Nassau County
	Suffolk County
14. Fort Lauderdale-Hollywood, FL.	Fort Lauderdale City
	Hollywood City
	Broward County
15. Jersey City, NJ	Jersey City
	Hudson County
16. Seattle-Everett, WA	Everett City
	Seattle City
	King County
	Snohomish County
17. San Diego, CA	San Diego City
	San Diego County
18. Denver-Boulder, CO	Boulder City
	Denver City
	Adams County
	Arapahoe County
	Boulder County
	Denver County
	Douglas County
	Gilpin County
	Jefferson County
19. New Orleans, LA	New Orleans City
	Jefferson Parish
	Orleans Parish
	St. Bernard Parish
	St. Tammany Parish
20. Baltimore, MD	Baltimore city
	Anne Arundel County
	Baltimore County
	Carroll County
	Harford County
	Howard County
	Baltimore City
21. West Palm Beach-Boca Raton, FL.	Boca Raton City
	West Palm Beach City
	Palm Beach County
22. San Juan, PR	Rural
	Urban
23. Detroit, MI	Detroit City
	Lapeer County
	Livingston County
	Macomb County
	Oakland County
	St. Clair County
	Wayne County
24. Anaheim-Santa Ana-Garden Grove, CA.	Anaheim City
	Garden Grove City
	Santa Ana City
	Orange County
25. Patterson-Clifton-Passaic, NJ.	Clifton City
	Passaic City
	Paterson City
	Passaic County

[FR Doc. 87-9862 Filed 5-8-87; 8:45 am]

BILLING CODE 4160-15

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of the Record of Decision for the Land Tenure Adjustment Portion of the Lower Gila South Resource Management Plan, Arizona

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of availability of the Record of Decision for a portion of the Lower Gila South Resource Management Plan (RMP).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Record of Decision (ROD) for the land tenure adjustment portion of the Lower Gila South RMP. This Record of Decision documents the approval of the land use plan that will guide the Lands program in the Lower Gila South planning area for the next 15 to 20 years. The land tenure adjustment decision identifies lands for acquisition, disposal and retention within the planning area. The planning area contains 2,009,232 acres of public land surface and 1,946,485 acres of subsurface minerals in southwestern Arizona.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision are available from BLM's Phoenix District office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. William T. Childress, Lower Gila Resource Area Manager, may be telephoned at 602-863-4464 for further information. Reading copies may be reviewed at BLM's Arizona State Office, 3707 N. 7th Street, Phoenix, Arizona 85011, phone 602-241-5504.

Dated: May 1, 1987.

Henri Bisson,

District Manager.

[FR Doc. 87-10614 Filed 5-8-87; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Public Hearing on Environmental Impact of Shore-Based Facilities for Commercial Fishing; Section 304(d) of Alaska National Interest Lands Conservation Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (FWS) has prepared, for public review, a final Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Kodiak National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. In accordance with section 304(d) of ANILCA the FWS proposes, as a part of the CCP, to not allow new permits, cabins, and campsites incident to commercial fishing rights. A public hearing will be held to receive testimony on this proposed action and a 30-day comment period will follow.

DATES: A public hearing will be held at 7:00 p.m. on May 13, 1987. Written comments on the proposal must be submitted on or before June 12, 1987, to receive consideration by the Regional Director prior to the signing of the Record of Decision.

ADDRESS: The public hearing will be at the Kodiak Junior High School cafeteria. Remarks should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E.

Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

A final CCP/EIS (including the proposal for commercial fishing facilities) has been prepared for general distribution. Those wishing to review the document may obtain a copy by contacting Mr. Knauer.

Copies of the final CCP/EIS are available for public review at the above location and at the Kodiak National Wildlife Refuge Office, 1390 Buskin River Road, Kodiak, Alaska.

SUPPLEMENTARY INFORMATION: The final CCP/EIS for the Kodiak National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317(a) of ANILCA and section 3(d) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include management of fish and wildlife populations and habitats; *commercial fishing facilities,* subsistence use on the refuge; oil and gas development; recreational use of the refuge; and wilderness management.

Based on the number of commercial fishing sites and facilities, the FWS believes that the level of commercial fishing activity on refuge lands may have significantly expanded past the 1979 level of activity, and that further expansion may be inconsistent with refuge purposes. Permitting additional sites, when combined with other potential developments and public use on the refuge, would increase long-term human presence on the refuge, which would not be consistent with refuge purposes. Documented information has shown that the cumulative effects of increasing human activity in brown bear habitat ultimately lead to significant reductions in the brown bear population.

The CCP states that existing permanent commercial fishing sites with permanent facilities will continue to be permitted on refuge lands. The FWS will also allow conversion of existing temporary living facilities (i.e., tent platforms) to permanent facilities. Under the mandates of section 304(d) of ANILCA, however, the Service is proposing that no new commercial fishing sites (onshore facilities) be permitted on Kodiak Refuge. No aquaculture support facilities will be permitted on refuge lands. On existing commercial fishing sites, the Service will study the minimum size and type of support facilities required to conduct the fishery and then develop guidelines for the size and type of facilities that will be permitted.

After considering the public's comments and the compatibility analysis, the Service will include a final compatibility determination in the record of decision.

Dated: May 1, 1987.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 87–10677 Filed 5–8–87; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits; San Diego Zoo, et al.

The following applicant 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–717689

Applicant: San Diego Zoo, San Diego, CA

The applicant requests a permit to import two male and four female captive born Cuvier's gazelle (Gazella cuvieri) from Munchener Tierpark Hellabrunn, Federal Republic of Germany for the purpose of breeding. These gazelles are to be added to the curent population at San Diego Zoo to add additional bloodlines to the group.

PRT–717790

Applicant: John L. Schwabland, Seattle, WA

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 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–717813

Applicant: San Antonio Zoological Gardens & Aquarium, San Antonio, TX

The applicant requests a permit to import one male black-footed cat (*Felis nigripes*) born at the Rotterdam Zoo, Rotterdam, the Netherlands for the purpose of enhancement of propagation.

PRT–717905

Applicant: Zoological Society of Cincinnati, Cincinnati, OH 45220

The applicant requests a permit to import one male captive born black-footed cat (*Felis nigripes*) from the Frankfurt Zoo, West Germany, for the purpose of enhancement of propagation.

PRT–717784

Applicant: Vargas Production, North Hollywood, CA

The applicant requests a permit to export and re-import one female Asian elephant (*Elephas maximus*) that has been held in captivity in the United States since 1970 and one male Asian elephant (*Elephas maximus*) captive born in the United States January 18, 1985, for the purpose of conservation education.

PRT–717838

Applicant: Gregg Miller of Environmental Science Associates, San Francisco, CA

The applicant requests a permit to take (capture & release) salt marsh harvest mice (*Reithrodontomys raviventris*) in the Palo Alto Bayland area, California, for the purpose of a status survey. The work would be done under contract to the city of Palo Alto.

PRT–717878

Applicant: John Massey, Dallas, TX

The applicant requests a permit to import a trophy of a bontebok (*Damaliscus dorcas dorca*) which was a member of a captive herd maintained by V. Pringle, Bedford, 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.

Date: May 6, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permits Office.

[FR Doc. 87–10667 Filed 5–8–87; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; The Cousteau Society, Inc.

The public is invited to comment on the following application for permits to

conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, and the regulations governing marine mammals (50 CFR Part 18).

File No. PRT–716284

Applicant: Name: The Cousteau Society, Inc., 8440 Santa Monica Blvd., Los Angeles, CA 90069

Type of Permit: Public Display.

Name and number of animals: polar bears (*Ursus maritimus*) -12-, walrus (*Odobenus rosmarus*) -75- Alaskan sea otter (*Enhydra lutris*) -50-

Summary of Activity to be Authorized: The applicant proposes to photograph walrus, sea otters and polar bears in their natural habitats within the State of Alaska, for purposes of filming a television documentary.

Source of Marine Mammals for Display: Bering Sea, Bering Strait, coastal Alaska, Aleutian Islands, Gulf of Alaska, Cape Pierce, Bristol Bay, St. Lawrence Island, Little Diomede Islands.

Period of Activity: May 8 through September 15, 1987.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601, N. Glebe Road, Arlington, Virginia.

Dated: May 6, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87–10668 Filed 5–8–87; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Intention to Negotiate Concession Permit

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 Director of the National Park Service, proposes to negotiate a concession permit with Moser's Food Market authorizing it to continue to provide grocery and gasoline sales and services for the public at C&O Canal National Historical Park, Maryland, for a period of five (5) years from January 1, 1987, through December 31, 1991.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit 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 contact the Superintendent, C&O Canal National Historical Park, Sharpsburg, Maryland 21782, for information as to the requirements of the proposed permit.

Dated: March 31, 1987.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 87–10633 Filed 5–8–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Change in Revocation Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of a procedural change.

SUMMARY: The Commission is revising its internal automated system for the processing of the revocation of operating authorities of all motor carriers, freight forwarders and property brokers subject to ICC regulation that fail to meet its financial responsibility requirements. The objective of the revised system is to encourage greater compliance with the Commission's financial responsibility requirements, and to reduce the administrative time period for revoking operating authorities for failure to comply with our financial responsibility regulations.

This change is our internal revocation processing practice is strictly procedural, and does not involve any change of the Commission's regulations. Therefore, comments are not being sought.

EFFECTIVE DATE: May 14, 1987.

FOR FURTHER INFORMATION CONTACT:

Alice K. Ramsay (202) 275–0854
Heber P. Hardy (202) 275–7148

SUPPLEMENTARY INFORMATION: The regulations prescribed in subsections (b) and (c) of 49 U.S.C. 10925 provide for the revocation of operating authoritiy, on the Commission's own initiative, within a period of not less than 30 days from the issuance of an order compelling compliance, where it is found that regulated transportation entity has willfully failed to comply with a regulation or order of the Commission. The revised automated procedure will implement 40 U.S.C. 10925 (b) and (c). Yet, this procedure will not alter any substantive carrier rights or Commission responsibilities. The revisions in our automated procedure will simply provide for a more orderly and expeditious method of revoking the operating authority of uninsured motor carriers, freight forwarders, and property brokers that fail to meet our financial responsibility requirements.

The Commission's insurance compliance program currently consists of enforcement features which involve a combination of letter notices, administrative consent agreements, and court issued restraining orders, where necessary, to prohibit uninsured operations after certificates of insurance have been cancelled.

The revisions in our procedures, which we are now implementing, will further provide for an ensure that a carrier's, forwarders' or broker's operating authority is revoked within approximately 135 days after the effective date of cancellation of the entity's insurance, surety bond or other evidence of security, thereby reducing the time that a transportation entity subject to Commission regulation, although not operating, can hold authority after having insurance or other evidence of security cancelled. The Commission's involuntary revocation procedures now allow regulated entities up to 120 days after insurance cancellations are effective before their operating authorities are revoked.

However, because of the administrative delay involved in processing individual cases, the time period in achieving actual revocation is often significantly longer than 120 days.

Noreta R. McGee,

Secretary.

[FR Doc. 87-10698 Filed 5-8-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31036]

Illinois Central Gulf Railroad Co.; Trackage Rights in Massac County, IL; Notice of Exemption

Burlington Northern Railroad Company (BN) has agreed to grant local trackage rights to Illinois Central Gulf Railroad Company (ICG). ICG will have the right to use rail lines in Massac County, IL, from BN's junction with the Paducah & Illinois Railroad (P&I) near Metropolis, IL, to a point approximately five miles northwest of Metropolis near Cook, IL, a distance of 5.33 miles. Both ICG and BN operate over P&I's tracks in Massac County. The trackage rights are effective on April 28, 1987.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Dated: May 4, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-10630 Filed 5-8-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Herbert Berger, M.D.; Revocation of Registration

On December 18, 1986, the Deputy Assistant Adminstrator, Office of Division Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Herbert Berger, M.D. (Respondent) at 7440 Amboy Road, Staten Island, New York 10307, proposing to revoke his DEA Certificate of Registration PB0122731 as a narcotic treatment program, maintenance/detoxification. The statutory basis for the Order to Show Cause under 21 U.S.C. 823(g) was that Respondent has consistently failed to maintain complete and accurate records concerning the inventory, receipt and dispensing of methadone. The Order to Show Cause was sent to Dr. Berger by registered mail. In a letter dated December 30, 1986, Respondent gave a statement regarding allegations in the Order to Show Cause and stated, "If in addition to this leeter [sic] you require a hearing please let me know and I will be present." In a letter dated January 8, 1987, the Hearing Clerk in the Office of the Administrative Law Judge acknowledged receipt of Dr. Berger's December 30, 1986, response to the Order to Show Cause and reiterated the various procedures available. The Hearing Clerk advised Dr. Berger that he would have to specifically request a hearing if he desired one and that he would be given until January 30, 1987, to request a hearing. Dr. Berger did not respond to the Hearing Clerk's letter. Since Dr. Berger has not requested a hearing, the Administrator now enters his final order in this matter without a hearing and based on the investigative file and the written statement submitted by Dr. Berger. 21 CFR 1301.57.

The Administrator finds that Dr. Berger obtained a registration with the Drug Enforcement Administration as a narcotic treatment program in 1975. He has been registered with DEA since that time. Dr. Berger's program has been the subject of four DEA investigations. These occurred in May 1976, May 1979, March 1982, and July 1986. In May 1976, Investigators conducted an investigation of Respondent's program. At this time the Investigators noted no recordkeeping violations, but advised the Respondent of the requirement to take a biennial inventory. During the May 1979, investigation DEA Investigators noted that Respondent failed to take any physical inventories of methadone, and that there was no biennial inventory as required by law and regulation. Furthermore, Respondent kept his methadone dispensing records in patients' medical files, in violation of the recordkeeping requirements of the Controlled Substances Act. Respondent was advised of these deficiencies and was provided with copies of the applicable regulations. Respondent was also advised of these violations in a letter dated May 21, 1979 from the Special Agent in Charge of the DEA New York Division. Dr. Berger responded to the letter indicating that he had instituted a new method of recordkeeping separate from the patient records.

In May of 1982, DEA Investigator once again conducted an investigation of Respondent's narcotic treatment program. Investigators again found that Respondent failed to take the required biennial inventory of methadone, having taken no physical inventory of methadone since the previous DEA investigation. Investigators noted that the receiving records, which were DEA triplicate order forms, were incomplete. Although Respondent kept separate dispensing records, these were not an accurate record of methadone dispensed. In addition, an accountability revealed an overage of 37 grams of methadone which Respondent was not able to reconcile. As a result of this investigation Respondent was sent a Notice of Hearing pursuant to 21 U.S.C. 883. In response to this Notice of Hearing Respondent submitted a letter dated June 21, 1982, responding to the violations cited, and indicating that the program would comply with requirements, and also indicating that the accountability was inaccurate because he rounded the figures off when he reported them to New York State.

In July 1986, Diversion Investigators from DEA's New York office conducted an investigation at Respondent's clinic. Respondent had again failed to take the required biennial inventory. The dispensing records were inaccurate, and did not correctly reflect the methadone dispensed to the patients. It was also noted that the monthly summaries submitted to the State of New York were incorrect, in that the totals of methadone dispensed were not added properly. The violations were discussed with Dr. Berger and he was given a copy of the Code of Federal Regulations.

The Respondent stated in his December 30, 1986, letter in response to the Order to Show Cause that he has a small private methadone treatment program which rarely treats more than three patients at a time. He also indicated that he has treated narcotic addicts since 1946. Respondent states that he has sent monthly forms to the DEA in Albany, New York, and that he had not been criticized in the past about his records. The Administrator finds Respondent's statement to be unpersuasive, and in conflict with the evidence in the investigative file.

The Administrator finds that Respondent has consistently failed to maintain complete and accurate records concerning the dispensing of methadone. Respondent has been given every opportunity by DEA to comply with the regulations, and has consistently failed

to do so. Although Respondent does not dispense large quantities of methadone, he has been unable to accurately account for the small quantities of methadone which he does dispense. The Narcotic Addict Treatment Act of 1974 and implementing regulations provide that all persons registered to maintain and/or detoxify controlled substance users in a narcotic treatment program must keep accurate records of inventory, receipt and dispensing of the narcotic controlled substance dispensed at the program. One of the requirements for registration of a narcotic treatment program is that the program, "comply with standards established by the Attorney General respecting * * * the maintenance of records (in accordance with section 827 of this title) on such drugs." 21 U.S.C. 823(g)(2). Respondent has not complied with the recordkeeping requirements of the Act. Respondent's registration as a narcotic treatment program is, therefore, subject to revocation for failure to maintain complete and accurate records to account for methadone dispensed by the program. The Administrator finds that Respondent's consistent failure to keep complete and accurate records warrants revocation of the registration.

Having concluded that there is a lawful basis for the revocation of Respondent's DEA Certificate of Registration, PB0122731 as a narcotic treatment program and having further concluded that the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration PB0122731 previously issued to Herbert Berger, M.D. as a narcotic treatment program, be, and it hereby is revoked effective June 11, 1987. Any outstanding applications for renewal of the registration are denied.

Dated: May 5, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-10653 Filed 5-8-87; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Registration; Ganes Chemicals Inc.

By Notice dated March 13, 1987, and published in the **Federal Register** on March 20, 1987; (52 FR 8987), Ganes Chemicals Inc., Lessee of Siegfried Chemical, Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-dimethylamino-4,4-diphenyl butane (9254)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 6, 1987.

Gene R. Haislip,

Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Adminstration.

[FR Doc. 87-10654 Filed 5-8-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-84]

Robert E. Hales, M.D.; Denial of Application

On October 14, 1986, the Administrator of the Drug Enforcement Administration (DEA) directed an Order to Show Cause to Robert E. Hales, M.D. (Respondent), of 2301 West Walnut Street, Rogers, Arkansas 72256 seeking to deny an application executed on May 23, 1986, and to revoke Certificate of Registration AH9637161. Simultaneous with the issuance of the Order to Show Cause, the Administrator immediately suspended Certificate of Registration AH9637161 previously issued to Respondent at an address in Odessa, Missouri. The statutory ground for the Order to Show Cause under 21 U.S.C. 823(f) was the inconsistency of Respondent's registration with the public interest. This was shown by, but not limited to, the voluntary surrender of Respondent's Missouri Bureau of Narcotics and Dangerous Drugs registration on April 2, 1986, terminating his authority to handle controlled substances in Missouri; and the emergency suspension of his medical license by the Arkansas State Medical Board on September 10, 1986, thereby terminating his authority to handle controlled substances in Arkansas.

Respondent, through counsel, requested an expedited hearing on the matters raised in the Order to Show Cause and immediate suspension of registration. The matter was docketed before Administrative Law Judge Francis L. Young, and subsequently docketed before Administrative Law Judge Mary Ellen Bittner. As ordered by Judge Young, both sides filed prehearing statements, the agency on December 27, 1986, and Respondent on December 30, 1986.

Agency counsel, on March 4, 1987, filed a motion for summary disposition, based on Respondent's lack of State authorization to possess, dispense, administer, prescribe or otherwise handle controlled substances in Missouri and Arkansas, the State in which he was registered, and the State in which he sought to be registered, respectively. By letter dated March 19, 1987, counsel for Respondent stated that he did not oppose the agency's motion for summary disposition. Accordingly, Judge Bittner terminated the proceedings before her in order for the Administrator to enter a final order in accordance with 21 CFR 1301.54(e). The Administrator enters this final order on the record as it appears.

The Administrator finds that Respondent held DEA Certificate of Registration AH9637161 at an address in Odessa, Missouri. The Administrator finds that on April 2, 1986, Respondent voluntarily surrendered his Missouri Bueau of Narcotics and Dangerous Drugs registration, thereby terminating his authority to handle controlled substances in Missouri. Respondent applied for DEA registration at an address in Rogers, Arkansas, on May 23, 1986, but Respondent was not registered with DEA in Arkansas. The Administrator finds that the Arkansas State Medical Board immediately suspended Respondent's Arkansas medical lincnse on September 10, 1986, thereby terminating his authority, under State law, to handle controlled substances in Arkansas.

This agency has consistently held that it does not have statutory authority to register a physician unless the physician is a "practitioner" authorized by the State in which he practices to handle controlled substances. See 21 U.S.C. 802(21) and 823(f). See *Donald Y. Stewart, M.D.*, Dk. No. 86-68, 52 FR 7672 (March 17, 1987); *Emerson Emory, M.D.*, Dk. No. 85-46, 51 FR 9543 (1986); *Agostino Carlucci, M. D.*, Dk. No. 82-20, 49 FR 33184 (1984). Since Respondent is not authorized to handle controlled substances in Missouri and Arkansas, the States in which he was registered

and in which he sought registration, respectively, DEA cannot register him in either State.

This agency has also consistently held that in instances where a physician is not authorized to handle controlled substances in the State in which he practices, a motion for summary disposition is properly entertained and must be granted. Where no fact question is involved, or when the facts are agreed, a plenary, adversary administrative proceeding involving evidence and cross-examination is not obligatory, even though a pertinent statute prescribes a hearing. In such situations, Congress does not intend administrative agencies to perform meaningless tasks. *United States* v. *Consolidated Mines and Smelting Co. Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *Philip E. Kirk, M.D.*, Dk. No. 82–36, 48 FR 32877 (1983), aff'd *sub nom. Kirk* v. *Mullen*, 749 F.2d 247 (6th Cir. 1984). Since Dr. Hales lacks authority to handle controlled substances in both Missouri and Arkansas, the Administrator cannot authorize a DEA registration in either State. In light of Respondent's lack of opposition to the motion for summary disposition, and of Repondent's lack of State authorization in Missouri and Arkansas, there is no need for a hearing in this matter.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AH9637161 prevously issued to Robert E. Hales, M.D., be, and hereby is, revoked; it is further ordered that the application executed by Dr. Hales on May 23, 1986, be, and hereby is, denied.

Dated: May 5, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87–10655 Filed 5–8–87; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration; Mallinckrodt, Inc.

By Notice dated March 13, 1987, and published in the **Federal Register** on March 20, 1987; (52 FR 8987), Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	oi0II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane (9254)	II
Bulk dextropropoxyphene (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid extracts (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II
Fantanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 6, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87–10656 Filed 5–8–87; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 87–3]

Jerel N. Owens, D.M.D.; Revocation of Registration

On December 10, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Jerel N. Owens. D.M.D., (Respondent) 15344 W. McNichols, Detroit Michigan 48235. The Order to Show Cause sought to revoke DEA Certificate of Registration AO9087695 issued to Dr. Owens. The statutory predicate for the Order to Show Cause was that the continued registration of Dr. Owens with DEA was inconsistent with the public interest as evidenced by the fact that he prescribed the Schedule II narcotic drug Dilaudid to individuals for no legitimate medical purpose and outside the scope of professional practice, and that he wrote fradulent presecriptions for controlled substances. Respondent, through counsel, requested a hearing based on the issues raised in the Order to Show Cause by a letter dated December 30, 1986. The matter was placed on the docket of Administrative Law Judge Francis L. Young. Prehearing documents were filed by agency counsel, and after requesting an extension of time, Respondent filed a waiver of hearing and statement dated March 17, 1987. Accordingly, the Administrator finds that Respondent has waived his right to a hearing pursuant to 21 CFR 1316.49 and now enters his final order in this matter based upon the investigtive file and the written statement filed by the Respondent. (21 CFR 1301.54(c))

The Administrator finds that Jerel N. Owens is a dentist with a practice in Detroit, Michigan. In 1982 DEA learned from a confidential source of information that he was purchasing prescriptions for Dilaudid, a potent Schedule II narcotic controlled substance, from Respondent for $150 per prescription. The confidential source indicated that he was purchasing several prescriptions for 30 tables of Dilaudid during each visit to Respondent. The confidential source further indicated that the prescriptions that he received from the Respondent had the names of actual patients on them.

On March 15, 1982, the confidential source went to Respondent's office under the direction and supervision of a DEA Special Agent. The confidential source was provided with $900, and was wearing a recording device. The confidential source told Respondent that he had saved money from the last prescriptions, and needed four more. Respondent gave the confidential source four prescriptions, each for 30 tablets of Dilaudid 4 mg. The confidential source left the money on Respondent's desk. Respondent called him back, said "Merry Christmas," and returned the $900 to the confidential source. On June 30, 1982, the confidential source returned to Respondent's office under the supervision and direction of DEA Investigators. Respondent asked the confidential source about his tooth, to which the source replied he was not there about his tooth, he needed Percodan. The confidential source further told Respondent that he was going to sell the Percodan in order to get money to get a girl out of jail. The confidential source indicated that he would bring Respondent $250 after selling the Percodan. Respondent left the room and returned with two prescriptions for Percodan, each for 50 tablets, which he gave the confidential source. One was written in the name of

the source the other was in a different name.

In September 1986, DEA Investigators reviewed prescription files in a Detroit area pharmacy. They found numberous Schedule II prescriptions written by Respondent. The Michigan Boad of Pharmacy had removed several of Respondent's prescriptions from the same pharmacy. For the period October 1, 1984, through September 25, 1986, there were over 850 Schedule II prescriptions written by Respondent in this one pharmacy. Prescriptions for Dilaudid accounted for 613 of these prescriptions. Attempts were made by DEA Investigators to contact the individuals whose names appeared on the prescriptions. For the first nineteen names, there was no listing in Detroit telephone directories or in the city index. In a further effort to verify the validity of the prescriptions, Investigator attempted to go to the address ilisted on the prescriptions. They found these addresses to be vacant lots, or nonexistent.

Respondent's waiver of hearing and statement dated March 17, 1987, do not respond to the matters at issue in this proceeding. This proceeding concerns Respondent's prescribing of controlled substances. Respondent's statement describes his background, education and community activities. While it appears that Respondent is involved in many professional and community organizations, these facts do not mitigate Respondent's prescribing of potent Schedule II narcotic drugs for no legitimate medical purpose. The facts in the investigative file clearly show Respondent was prescribing Dilaudid and Percodan to an individual, knowing that the drugs wer not for that individual's medical use. In addition, Respondent has continued to prescribe a large volume of narcotics to individuals that apparently do not exist. Respondent's continued registration with the Drug Enforcement Administration is inconsistent with the public interest. His DEA Certificate of Registration should be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AO09087695, previously issued to Jerel N. Ownes, D.M.D., be, and it hereby is revoked. Any pending applications for removal of such registration are hereby denied. This order is effective June 10, 1987.

Dated: May 5, 1987.

John C. Lawn

Administrator

[FR Doc. 87-10657 Filed 5-8-87; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration of Sterling Drug Inc.

By Notice dated March 13, 1987, and published in the **Federal Register** on March 20, 1987 (52 FR 8990), Sterling Drug Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pethidine (meperidine) (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: May 6, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87-10658 Filed 5-8-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

4,4'-Methylenedianiline Mediated Rulemaking Advisory Committee; Meeting

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a Committee meeting to be held from May 18-21, 1987.

DATES: The meeting is scheduled to begin on May 18, 1987 at 9:30 a.m. in Room C2318, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Status: These meetings will be open to the public.

AGENDA: The committee will review and edit its final recommendations to OSHA regarding a proposed standard on MDA.

ADDRESS: Submissions presented in response to this notice should be sent in quadruplicate to the Docket Officer, Docket No. H-040, Room N3670, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523-7894. Written comments received, as well as other information in Docket H-040, will be available for inspection and copying at this address, Monday through Friday, 8:15 a.m. to 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523-8615.

SUPPLEMENTARY INFORMATION: On October 22, 1985, OSHA announced its intent to make use of negotiated rulemaking in developing a proposed standard for MDA (50 FR 42790-42793). The notice also set forth the basic concepts of negotiated rulemaking and outlined the participant selection criteria which OSHA expected to use in establishing an MDA Advisory Committee.

OSHA established the committee in accordance with the Federal Advisory Committee Act (FACA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to mediate issues associated with the development of a Notice of Proposed Rulemaking on MDA.

Appointees to the committee include representatives from labor, industry, health and safety groups, and government agencies.

Members of the public wishing to submit written statements to the Committee that are germane to the agenda may do so. Such statements should be in reproducible form and should be submitted to the OSHA Division of Consumer Affairs at least 5 days before the meeting. In addition, the Mediator or Chairman of the Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting.

Minutes of these meetings will be available for public inspection at the OSHA Docket Office, U.S. Department of Labor, Rm. N-3670, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 523-7894.

Signed in Washington, DC, this 5th day of May 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87-10651 Filed 5-8-87; 8:45 am]

BILLING CODE 4610-26-M

LEGAL SERVICES CORPORATION

Funding Availability for Law School Civil Clinical Programs

AGENCY: Legal Services Corporation.

ACTION: Announcement of funding.

SUMMARY: The Legal Services Corporation (LSC) announces that grant funds are available for improving the quality of law school civil clinical programs. The Corporation will distribute up to twenty (20) one-time non-recurring grants to geographically dispersed law schools of varying sizes. Each grant will be for 12 months. Applicants may request funding of up to $50,000 per grant. All grants will be awarded pursuant to authority conferred by section 1006(a)(1)(B) and section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. Grantees are required to guarantee that more than 50 per centum of the funds required shall come from non-Federal sources and that federally funded assets and projects will not be included in in-kind services.

Proposals for the grants will be solicited from all law schools which are currently accredited by the American Bar Association, or accredited for purposes of bar admission by the state bar association of the state in which the law school is located. Proposals may be submitted by either a single law school or a consortium of law schools. Each applicant must submit appropriate documentation of eligibility.

Copies of the solicitation package are available from the LSC Office of Field Services.

DATE: All grant proposals must either be postmarked or received by the Office of Field Services on or before June 10, 1987. Grant awards will be announced by June 1987.

FOR FURTHER INFORMATION CONTACT: Charles T. Moses, Legal Services Corporation, Office of Field Services, Program Development and Substantive Support Division, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: In 1984, LSC initiated a nationwide research project by providing fourteen (14) law school clinics with one-time, non-recurring grants. In return for these funds, the clinics employed clinical legal education as a means for rendering legal assistance to eligible clients. In 1985, this effort was supplemented as a result of a special Congressional appropriation that enabled LSC to fund twenty (20) law school clinics. And, in 1986, fifteen (15) law school clinics joined in the effort. To date, a total of forty-nine (49) law school clinics have received one-time, non-recurring funding from LSC.

Congress has recognized this necessary support of clinical education. Consequently, the Corproation is pleased to announce the fourth year of its cooperative effort with the law school clinics by continuing its annual grant competition.

LSC recently completed a formal assessment of the research project and found that the law school clinics offer a unique opportunity for augmenting the services provided by existing legal services programs. Competent, efficient services can be provided by involving supervised law students in the direct delivery of legal services to low-income clients. Furthermore, the students' clinical experience acquaints them with the unique needs of LSC's eligible clients in an environment that is intended to increase further reduced fee or *pro bono* involvement. Consequently, the law school clinic project meets the immediate needs of indigent persons and also promotes the expansion of future delivery of legal services to eligible clients by lawyers in public service and private practice.

This grant program is designed to provide monetary assistance for expansion or development of law school clinical programs which address the civil legal needs of poor persons. This expansion could include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage, providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance, developing projects which provide services to underserved segments of the population (e.g., Native American, handicapped, homebound, isolated, and rural residents) or filling in the gaps in existing services and resources.

A variety of methods could be used to provide these services including but not limited to: (1) An independent university sponsored clinic; (2) a joint clinic in which existing faculty provide legal instruction while LSC field attorneys provide the necessary clinical supervision; (3) a law school clinic concentrating on a previously underserved, specific client population (e.g., Native American); (4) a law school clinic concentrating totally in one field of law (e.g., Social Security Disability, SSI); and (5) a joint model in which an attorney becomes appointed as an adjunct professor at the law school thereby becoming responsible for both the law education and the clinical supervision of law students.

Selection Criteria

All proposals submitted to LSC/OFS will be reviewed to insure that each is responsive to the minimum requirements set forth in this solicitation. Final selection of grantees will be made by the President of LSC in consultation with the Director of the Office of Field Services (OFS), following submission of non-binding recommendations from an advisory committee comprised of outside private experts and LSC staff. The following criteria, which have been grouped into four basic categories, will be used to assess each proposal:

1. Effective Management/Ability to Meet Project Needs

(a) The provision of a clear description of clinic activities intended to increase legal services to the local LSC client eligible population, and an effective plan for management of the clinic.

(b) The provision of a budget which is adequate to support clinic activities, and which cites costs that are reasonable in relation to the duration and objectives of the proposed clinic.

2. Quality Supervision and Training

(a) Evidence that the clinic director and key clinic staff have the necessary qualifications and experience to effectively administer the proposed clinic and will be able to allocate an adequate amount of time and resources to the clinic. This is especially so with regard to the provision of appropriate levels of student supervision by faculty members, clinic staff attorneys, LSC attorneys or private *pro bono* practitioners.

(b) Evidence that the proposed clinic provides for the high quality education and training of students in the necessary areas of the law and is equipped to deliver high quality legal services in a cost effective manner.

3. Community Cooperation

The extent to which a cooperative effort is shown between an area's legal services provider and the corresponding area's law school clinics. Letters or other evidence of support by this provider for the proposed clinic may be

attached where appropriate. Support and participation from the private bar which result in increased attorney participation is also encouraged by LSC and should be specifically encouraged by each applicant.

4. University Commitment

(a) The degree to which the institution's regular budget is currently allocated to its clinical education program, and to its clinical activities. Evidence that such budgetary support levels will be *maintained* during and beyond the term of the grant. The viability of the civil clinic beyond the term of the grant must be specifically addressed.

(b) Demonstration that the applicant plans to make an adequate in-kind contribution. In order to maximize service delivery, indirect administrative costs will not be allowed to be deducted from LSC grant funds.

Note.—Federally funded assets and projects cannot be counted as an in-kind contribution.

To ensure nationwide participation and geographic distribution, OFS has created seven administrative regions to be used strictly for the purposes of this project. The boundaries of these regions were drawn based upon the need for geographic dispersion combined with the desire that each region contain a generally proportionate number of states as well as eligible law schools. Depending upon the availability of qualified applicants, at least one grantee will be selected in each of the seven regions.

The seven LSC/OFS Law School Civil Clinical Program regions containing all areas in which LSC provides legal services are listed below:

Region No. 1: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont
Region No. 2: Delaware, District of Columbia, Kentucky, Maryland, North Carolina, Virginia, West Virginia
Region No. 3: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Tennessee, Puerto Rico, South Carolina, U.S. Virgin Islands
Region No. 4: Illinois, Indiana, Michigan, Ohio, Pennsylvania
Region No. 5: Colorado, Kansas, Missouri, New Mexico, Oklahoma, Texas
Region No. 6: Alaska, Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, Wisconsin, Wyoming
Region No. 7: Arizona, California, Hawaii, Nevada, Utah, Micronesia, Guam

John H. Bayly Jr.,

President Legal Services Corporation.

[FR Doc. 87-10643 Filed 5-8-87; 8:45am]

BILLING CODE 6820-35-M

[Dockets Nos. 50-325 and 50-324]

Nuclear Regulatory Commission Carolina Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Carolina Power & Light Company (the licensee), for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the Type C testing requirements of Appendix J to 10 CFR Part 50 for certain isolation valves associated with the hydrogen/oxygen monitoring system

The Need for the Proposed Action

The licensee has started that the application of the Type C testing requirements is not necessary to ensure the leak-tight integrity of the hydrogen/oxygen monitoring system. Since the system is designed to be open to primary containment after a postulated accident, the licensee states that testing of the valves is not required. However, to ensure that the system piping will not leak when the system function is required (valves open), the licensee has proposed to supplement the ongoing periodic Type A tests with soap bubble testing of the system pipe fittings. The alternative tests will result in lower personnel radiation exposure and a lower financial burden to the licensee.

Environmental Impact of the Proposed Action

The proposed exemption only affects components which are within the site boundaries and actually within reactor secondary containment. There is no anticipated decrease in the reliability of these components to operate as designed in the event of an accident. Post-accident radiological releases will not differ from those determined previously and the proposed exemption dces not otherwise adversely affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the test procedures for Type C components required in Appendix J. Such action would not enhance the protection of the environment.

Alternative Use of Resources

The action does not involve the use of resources not considered previously in the Final Environmental Statement for the Brunswick Steam Electric Plant, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For futher details with respect to this proposed action, see the licensee's letters dated October 25, and December 20, 1985, March 20, September 4 and December 11, 1986 and February 27 and March 17, 1987. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Bethesda, Maryland, this 5th day of May 1987.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects-I/II.

[FR Doc. 87-10694 Filed 5-8-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-412]

Duquesne Light Co., et al.; Environmental Assessment and Finding of No Significant Impact

In the matter of Duquesne Light Co., Ohio Edison Co., Cleveland Electric Illuminating Co. and Toledo Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of (1) 10 CFR 50.55a(h), and (2) Appendix J to 10 CFR Part 50, to Duquesne Light Company, et. al. (the applicants), for the Beaver Valley Power Station, Unit 2, located in Shippingport, Pennsylvania.

Environmental Assessment

Identification of Proposed Actions

Duquesne Light Company, on behalf of all the applicants, filed letters to identify the need for these exemptions. These are described as follows:

(1) 10 CFR 50.55a(h) codifies the requirements of IEEE Standard 279. Currently, the design of the feedwater isolation actuation circuitry does not meet the requirements prescribed in paragraph 4.7 of IEEE 279. Several options are available to satisfy the subject requirements and the applicants, by letter dated March 4, 1987, committed to install a device called a median selector. This is an acceptable option but the device cannot be installed prior to fuel load. The applicants requested a schedular exemption to permit operation without the subject device during the first fuel cycle.

(2) Section III.D.2(b)(ii) of Appendix J, 10 CFR 50, states that "Air locks opened during periods when containment integrity is not required by the plant Technical Specifications shall be tested at the end of such periods at not less than P_a." By letter dated March 6, 1987, the applicants requested that the Beaver Valley Unit No. 2 Technical Specifications be written to require an overall air lock leak rate test at P_a (44.7 psig) to be performed "Upon completion of maintenance which has been performed on the air lock that could affect the air lock sealing capability." This requested exemption is consistent with the staff's position on the acceptable testing frequency necessary to demonstrate air lock sealing capability intended in Appendix J. The staff's current position is shown in the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (NUREG-0452 Rev. 4). Until Commission Rulemaking changes the current requirement in Appendix J, and exemption to the present regulation must be granted before the licensee can adopt the requested regulation.

The Need for Proposed Actions.

The proposed exemptions are needed because:

(1) A steam generator overfill event that happens as a result of the current design is extremely unlikely. In addition, operators are trained to immediately identify potential overfill events and take remedial actions. Literal compliance with IEEE-279 at this time would cause a delay to startup of the unit. The requested schedular exemption would be granted on the basis of the staff's analysis of compensatory measures.

(2) Based on experience at various plants, the staff found that literal compliance with Section III.D.2(b)(ii) of Appendix J is not necessary to assure containment leaktightnes. The requested exemption is in compliance with the staff's technical position and has been granted to many plants, including Beaver Valley Unit I. Literal compliance with the regulation would lead to increased costs and occupational exposure.

Environmental Impacts of the Proposed Actions.

(1) The proposed exemption to 10 CFR 50.55a(h) is based on compensatory measures that would insure the same degree of safety as that provided by the requirements of IEEE 279. Therefore, this exemption will not increase the probability of accidents and the post-accident radiological releases to greater than previously determined, nor otherwise affect radiological plant effluents.

(2) Similarly, the proposed exemption to 10 CFR Part 50, Appendix J, Section II.D.2(D)(ii) will assure air lock sealing capability and containment integrity; therefore, this exemption will not increase the probability of accidents and the post-accident radiological releases to greater than previously determined, nor otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no signfiicant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Actions.

The principal alternative to the proposed actions would be to deny the requested exemptions. This would cause an unnecessary delay to startup of the unit, resulting in increased costs for each exemption) and occupational exposure (for the second exemption).

Alternative Use of Resources

These actions involve no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Beaver Valley Power Station, Unit No. 2.

Agencies and Persons Consulted

The NRC staff reviewed the applicants' requests and did not consult other agencies or persons.

Finding of Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed actions will not have a significant affect on the quality of the human environment.

For further details with respect to these actions, see the applicants for exemptions dated March 4 and 6, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland this 30th day of April, 1987.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects I/II.

[FR Doc. 87-10596 Filed 5-8-87; 8:45 am]

BILLING CODE 7590-01-04

[Docket No. 50-029]

Yankee Atomic Electric Co., Yankee Nuclear Power Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Appendix J to 10 CFR Part 50 to Yankee Atomic Electric Company (the licensee) for the Yankee Nuclear Power Station (Yankee)

located at the licensee's site near Rowe, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The licensee is requesting an exemption from Paragraph III.A.3 of 10 CFR Part 50 Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." In 1973, Appendix J was issued to establish requirements for primary containment leakage testing and incorporated by reference, ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This Standard requires that containment leakage calculations be performed by using either the point-to-point method or the total time method. The total time method was used the most by the nuclear industry until about 1976.

As noted in N45.4, the point-to-point method is suited to uninsulated containments where atmospheric stability is affected by outside diurnal changes, while the total time method is appropriate for insulated containments that are relatively unaffected by diurnal changes. In 1976, an article "Containment Leak Testing: Why the Mass-Plot Analysis Method is Preferred," Power Engineering, February 1976, was written which compared the results of test analyses that were performed using point-to-point, total time and mass-plot techniques. Subsequently, the mass-plot method received the Commission's endorsement and a conforming change to Appendix J was proposed. A revision to the Standard (reference: ANSI/ANS 56.8–1981, "Containment System Leakage Testing") specifies the use of mass-plot, to the exclusion of the two older methods. However, at this time, licensees who wish to use mass-plot must submit an application for exemption from the Appendix J requirement that containment integrated leak rate tests will conform to N45.4. The exemption proposed by the licensee would be granted until pending changes to Appendix J become effective. The exemption applies only to the method of calculating leakage by use of mass-plot and not to any other aspect of the tests. The mass-plot method is a newer and more accurate means of calculating containment leakage. In the mass-plot method, the mass of air in containment is calculated and plotted as a function of time. Leakage is calculated from the slope of the Linear Least Squares.

The Commission's staff believes that the mass-plot method was not specified in ANSI N45.4–1972 because the other more conservative methods (point-to-point and total time) were adequate and suitable for the sensitivity levels of the instrumentation in use at that time. However, with the present developments in technology, the mass-plot method has gained recognition as the proper one to use. The superiority of the mass-plot method becomes apparent when it is compared with the two other methods. In the total time method, a series of leakage rates are calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing or outgassing) the initial data point is not accurate, the results of the text will be affected. In the point-to-point method, the leak rates are based on the mass difference between each pair of consecutive points which are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the point-to-point method ignores any mass readings during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

The licensee's request for exemption and the bases therefore are contained in a letter dated April 17, 1987.

The Need for the Proposed Action

The exemption is needed to allow continued use of the mass-plot analysis method at Yankee.

Environmental Impact of the Proposed Action

The proposed exemption will have no incremental environmental impact relative to current practice because the exemption will allow testing to be conducted in the same manner as it is currently performed.

The erraticism of the total time method creates a higher probability of unnecessarily failing a containment integrated leakage rate test (note that the calculational procedure is independent of containment tightness) possibly resulting in increased test frequency, critical path outage time, and exposure to test personnel.

Thus, radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, and has not other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for exemption submittal dated April 17, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Bethesda, Maryland, this 5th day of May 1987.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Project Director, Project Directorate I–3, Division of Reactor Projects I–II

[FR Doc. 87–10695 Filed 5–8–87; 8:45am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Implementation of Change in the Domestic Mail Classification Schedule Provision Regarding Maximum Size Limits for Third-Class Mail

AGENCY: Postal Service.

ACTION: Notice of implementation of a change in the Domestic Mail Classification Schedule regarding maximum size limits for third-class mail.

SUMMARY: This gives notice of the implementation of a change in the Domestic Mail Classification Schedule

to increase the maximum size limits for mail qualifying for carrier route presort third-class mail rates by 0.50 inch in length and 0.25 inch in width.

EFFECTIVE DATE: 12:01 a.m., May 31, 1987.

FOR FURTHER INFORMATION CONTACT: Gerald J. Robinson, (202) 268–2983.

SUPPLEMENTARY INFORMATION: On October 31, 1986, the United States Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on amending of the Domestic Mail Classification Schedule, a set of mail classification rules established pursuant to 39 U.S.C. 3623. The Postal Service proposed that the maximum size limit for mail qualifying for carrier route presort rates be enlarged by 0.50 inch in length and 0.25 inch in width.

Notice of the Postal Service Request and its proposal was published by the Postal Rate Commission in the **Federal Register** on October 15, 1986. 51 FR 36764 (1986).

On April 1, 1987, the Postal Rate Commission issued its Recommended Decision on the Request, recommending the change the Postal Service had requested.

On May 5, 1987, the Governors of the postal Service, pursuant to 39 U.S.C. 3625(b), approved the Commission's Recommended Decision and ordered the classification change into effect. As amended, section 300.030(b) of the Domestic Mail Classification Schedule reads as follows:

> Except as provided in section 300.030(c), the maximum size for mail qualifying for the carrier route presort level is 14 inches in length, 11.75 inches in width and 0.75 inch in thickness.

By a separate resolution adopted the same day, the Board of Governors of the Postal Service, pursuant to 39 U.S.C. 3625(f), set the effective date of the change at 12:01 a.m., May 31, 1987. Board of Governors Resolution No. 87–4 (May 5, 1987).

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–10666 Filed 5–8–87; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–15717; 812–6075]

May 4, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption from the Investment Company Act of 1940 ("1940 Act").

Applicant: Cillicothe Industrial Development Corporation.

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 6(e) from all provisions of the 1940 Act and its rules, other than: (i) Sections 9, 17(a)-(e), 31, 36(a) and 37 and the rules thereunder; (ii) all sections of the 1940 Act and its rules necessary to implement the foregoing; and (iii) all administrative, procedural and jurisdictional sections of the 1940 Act.

Summary of Application: Applicant, whose purpose is to promote the development of small business concerns in the Chillicothe, Missouri area ("Area"), seeks an SEC order conditionally exempting it from all provisions of the 1940 Act, with certain exceptions. Applicant submits that the requested exemption is appropriate in light of, among other things, its public purpose.

Filing Date: The application was filed on March 15, 1985, and amended on April 8 and 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on May 28, 1987. Request a hearing in writing giving the nature of your interest, the reasons for the request, and the issues contested. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary, SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549; Applicant, P.O. Box 416, 715 Washington, Chillicothe, MO 64601.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Meryl Dewey (202)272–3038 or Special Counsel H.R. Hallock, Jr. (202)272–3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier (800)231–3282 (in Maryland (301)258–4300).

Applicant's Statements and Representations

1. Applicant, a Missouri corporation organized in 1955, was formed for the purpose of facilitating small business development in the Area. During the 1950's, Applicant made two offerings of its common stock, at a price of $25.00 per share which raised a total of $185,000. The stock was purchased almost exclusively (99.6%) by Area residents, 77% of whom still reside therein. Applicant now has approximately 700 shareholders holding 7,400 shares. There is no market nor is there expected to be a market for the shares and resales between existing shareholders are infrequent.

2. Applicant's assets, totalling approximately $1,000,000 consist of: (i) Real estate leases to two Area employers; (ii) a 50% ownership interest (purchased in 1967) in the first nursing home established in the Area; and (iii) long-term certificates of deposit. As far as management of Applicant is aware, Applicant has never invested any funds, leased properties, or provided similar financial assistance to any business venture in which any of its officers or directors or other affiliated persons has had a financial interest. Applicant's net earnings for the year ended December 31, 1986 were approximately $15,000. Applicant seeks the requested order because it might be deemed an investment company under section 3(a)(3) of the 1940 Act as the value of its investment securities exceed 40% of its total assets (excluding Government securities and cash).

3. Harden, Cummings, Moss & Miller, a local accounting firm of which one of Applicant's officers is a partner, compiles Applicant's unaudited financial statements.

4. Applicant was precluded from investing the cash generated by its nursing home interest in Area businesses because a moratorium on new gas hook-ups and the discontinuance of railroad freight services to the Area inhibited Applicant's effort to attract new manufacturing concerns.

5. Applicant believes that its activities are essential to Area business development. For example, Applicant recently expended $20,000 to promote passage of local bond issues to upgrade electric and sewage treatment facilities and invested $100,000 in a new non-profit railroad intended to renew freight service to the Area. Further, Applicant works closely with Chillicothe's Chamber of Commerce ("Chamber") and contributes approximately 50% ($15,000)

of its annual operating budget. The Chamber's two employees represent the Chamber, Applicant and the Chillicothe Fine Arts Counsel. (None of Applicant's other officers or directors receive any compensation.)

6. Applicant is a small, locally owned and managed entity dedicated to the development of the employment base in the Area. Although Applicant is organized as a profit corporation and may make successful investments, its investors recognize that the main benefit to them is a productive Area business climate. Applicant has and will continue to invest its funds with the objective of developing the Area economy, and not with a view to making profits through investments in securities. According to Applicant, the investors in its common stock were not motivated by an expectation of profit, but a desire to contribute to an important community effort. Applicant has paid dividends on its common stock only once (in the 1950's) and management does not intend to pay dividends in the foreseeable future. Thus, Applicant submits that granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conditions to order

Applicant agrees that any order granting the requested relief may be expressly subject to the following conditions:

(1) Applicant will be subject to all administrative, procedural and jurisdictional provisions of the 1940 Act and section 9, 17(a)–(e), 31, 36(a) and 37 and the rules promulgated thereunder, as well as all sections of the 1940 Act and the rules promulgated thereunder necessary to implement and enforce the above sections of the 1940 Act, as if it were a registered investment company;

(2) Harden, Cummins, Moss & Miller may continue to be engaged for preparation of Applicant's unaudited financial statements only if Applicant's Board of Directors determines in good faith that the rates charged for the company's services are reasonable and proper and do not exceed those which Applicant could otherwise obtain from third parties.

(3) Regarding any future offerings of its securities, Applicant will—

(a) not make such offerings unless they are only to promote the growth of Area small businesses consistent with its Articles of Incorporation; (b) make such offerings only to residents of or businesses having a substantial presence in the Area; (c) require purchasers to represent that: (i) They are purchasing for investment and not with a view to resale and (ii) with respect to any person purchasing in excess of $10,000 of the securities being offered, the amount purchased does not exceed 20% of such purchaser's net worth; (d) require purchasers to enter into a shareholders' agreement whereby shareholders and Applicant will have the right to purchase a selling shareholder's securities for the same price initially paid by such selling shareholder to Applicant for the shares to be sold; and (e) provide disclosure to investors prior to purchase of the conditions imposed by this Condition (3) and the restriction on the payment of dividends imposed by Condition (4);

(4) Dividends will not be paid to Applicant's shareholders without Applicant either registering under the 1940 Act or obtaining the prior approval of the SEC.

(5) Applicant will hold regular meetings of its shareholders for the purpose of electing directors and transacting whatever other business may come before the meeting.

(6) Applicant will submit for shareholder ratification or approval at each annual shareholders' meeting the appointment of an independent certified public accountant engaged by Applicant.

(7) Applicant will make available to shareholders its annual audited financial statements.

(8) Applicant will not repurchase any of its shares for a purchase price greater than it received upon the original issuance of such shares.

(9) Applicant will continue to invest its funds with a view towards promoting the growth of small business, and thus development of a productive economic climate in the Area, and not to making profits through investment in securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-10634 Filed 5-8-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15718; 812-6318]

Mackay-Shields Mainstay Series Fund et al.; Application for Contingent Deferred Sales Charge and Exchange Privileges

May 5, 1987.

AGENCY: Securities and exchange Commission ("SEC").

ACTION: Notice of Application for an Order to Amend an Existing Order under the Investment Company Act of 1940 ("1940 Act").

Applicants: MacKay-Shields MainStay Series Fund ("Series Fund"), MacKay-Shields MainStay Tax Free Bond Fund ("Bond Fund"), (collectively, the "Funds") and NYLIFE Securities Inc. (formerly, New York Life Securities Corp.) ("NYLIFE") on behalf of all existing and subsequently created series of the Funds and any other investment company or series which will be distributed by NYLIFE on substantially the same basis as the Funds' shares ("Other NYLIFE-Distributed Funds").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisons of sections 2(a) (32), 2(a) (35), 22(c) and 22(d), and Rule 22c–1 thereunder, and approval of exchange offers requested under section 11(a).

Summary of Application: Applicants seek an order amending an existing order (Investment Company Act Release No. IC–15078, April 30, 1986) ("Existing Order") permitting the Funds and Other NYLIFE-Distributed Funds: (1) To assess and waive a contingent deferred sales charge ("CDSL") imposed on their shares in certain circumstances; (2) to waive the CDSL on redemptions of their accounts established with a substantial initial purchase; and (3) to offer certain exchange privileges.

Filing Date: The application was filed on April 17, 1987, and amended on May 4, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington DC 20549.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272–3037 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be

contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Funds are each registered under the 1940 Act as an open-end, diversified, management investment company. It is expected that Bond Fund will be reorganized as the MacKay-Shields Tax Free Bond Fund on May 29, 1987. The Funds' shares are offered for sale to the public through broker-dealers pursuant to a distribution agreement with NYLIFE, the Funds' administrator, principal underwriter and distributor. NYLIFE is a broker-dealer registered under the Securities Exchange Act of 1934. MacKay-shields Financial Corporation ("Adviser") is the Funds' investment adviser. Both NYLIFE and the Adviser are indirect, wholly-owned subsidiaries of New York Life Insurance Company.

2. The Existing Order permits the Funds and Other NYLIFE-Distributed Funds to assess and waive a CDSL on certain redemptions of the shares. In addition to the CDSL, the Funds pay an annual fee to NYLIFE for services rendered in connection with the offering of the Funds' shares pursuant to plans of distribution adopted under Rule 12b-1 under the 1940 Act ("Plan"). The MacKay-Shields Money Market Fund series of the Series Fund ("Money Market Fund") has not adopted and does not currently intend to adopt a Plan. In their review of the respective Plans, the Trustees of the Funds and Other NYLIFE-Distributed Funds will consider the effect of the CDSL, including the use by NYLIFE of revenues derived therefrom.

3. Applicants wish to amend the Existing Order to permit the Funds and Other NYLIFE-Distributed Funds to assess and waive the CDSL on certain redemptions of their shares. In addition, Applicants request relief to permit the CDSL to be waived for redemptions by shareholders who open an account with the Funds or Other NYLIFE-Distributed Funds with an initial investment of $1,000,000 or more. In connection with the waivers, Applicants have undertaken to take the steps necessary to ensure that holders of shares for which the CDSL is waived will not resell such shares to any persons other than Applicants.

4. Applicants further request approval of certain offers of exchange among the Funds and Other NYLIFE-Distributed Funds. Under the Existing Order, the Funds offer their shares without an initial sales charge, but impose a CDSL upon certain redemptions of shares that are removed from the MacKayShields family of funds, with the exception of the Money Market Fund which is sold without a front-end sales charge or CDSL. However, if the redemption proceeds are reinvested in another series of the Funds or Other NYLIFE-Distributed Funds (an exchange based on relative net asset value of the securities to be exchanged, subject to a $5 transaction fee for each exchange in excess of five during any twelve month period), the CDSL will be postponed.

5. In addition, the length of time a shareholder will be deemed to have owned his shares for the purpose of determining the appropriate rate of the CDSL will be calculated from the date of purchase of the shares of a Fund or Other NYLIFE-Distributed Fund that imposes a CDSL. Thus, the holding period will be tacked during exchanges among the Funds and Other NYLIFE-Distributed Funds, resulting in the lowest applicable CDSL. However, with respect to exchanges from the Money Market Fund into any other series of the Funds, initial investments therein will not be counted toward the holding period for purposes of computing the CDSL charge. In any case, the amount of such CDSL will never exceed 5% of the aggregate purchase payments made by the investor.

6. Applicants submit that the imposition and waiver of the CDSL is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Furthermore, waiver of the CDSL for redemptions made by substantial shareholders as described above is fair because such redemptions involve the redemption of shares that were sold at little or no expense to NYLIFE, and the existence of relatively large shareholder accounts will realize economies of scale and, thus, reduce the proportion and amount of expenses borne by each shareholder. Furthermore, such waiver will not dilute the value of the shares owned by the remaining shareholders. Finally, it is fair and equitable to permit the tacking of the holding period of an investor who purchased shares of the Money Fund through an exchange of shares of another Fund or other NYLIFE-Distributed Fund held by the investor, but not to permit the tacking of the holding period of an investor's initial investment in the Money Fund because at that time no sales charge is a contingent liability.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d-1 under the 1940 Act.

2. Applicants will comply with the provisions of proposed Rule 11a-3 under the 1940 Act if and when it is adopted by the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–10686 Filed 5–8–87; 8:45am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

[Docket No. 44843]

U.S.-Venezuela Route Proceeding, Notice of Prehearing Conference

Served: May 4, 1987.

Notice is hereby given that a prehearing conference in the above-titled proceeding will be held on May 28, 1987, at 10 a.m. (local time), in Room 9230, Nassif Building, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

The parties are directed to submit one copy to each other and four copies to the Judge of: (1) Any proposals for changes in the evidence request contained in the Appendix to Order 87–4–65, (2) proposed procedural dates, (3) proposed stipulations and (4) a statement of position. This material shall be submitted on or before May 26, 1987.

Dated at Washington, DC, May 4, 1987.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 87–10647 Filed 5–8–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review; Gainsville, Regional Airport, FL

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of Gainesville for Gainesville Regional Airport (GNV) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR

Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for GNV under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 30, 1987.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is April 30, 1987. The public comment period ends June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mary Maher, Airport Planning Specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812, (305) 648-6583.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for GNV are in compliance with applicable requirements of Part 150, effective April 30, 1987. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 30, 1987. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Gainsville submitted to the FAA on January 27, 1986, with September 29, 1986 supplement, noise exposure maps, descriptions and other documentation which were produced during FAA Part 150 Study conducted at GNV from June 18, 1984 to January 27, 1986. It was requested that the FAA review this material as the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Gainsville. The specific maps under consideration are depicted as "Figure 7, Current (1985) Ldn Contours and Land Use" and Figure 8, Fifth Year (1990) Ldn Countours and Land Use" in the submissions. The FAA has determined that these maps for GNV are in compliance with applicable requirements. This determination is effective on April 30, 1987. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for GNV, also effective on April 30, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 30, 1987.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, DC

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32812

Gainesville Regional Airport, 3400 NE. 39th Avenue, Suite A, Gainsville, FL 32601

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTRACT:**

Issued in Orlando, Florida April 30, 1987.

James E. Sheppard

Manager, Orlando Airports District Office.

[FR Doc. 87-10609 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

Groton-New London Airport, Groton, CT; Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Connecticut Department of Transportation (CT DOT) 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 non-federal responsibilities in Senate Report No. 96–52 (1980). On July 1, 1986, the FAA determined that the noise exposure maps, submitted by the CT DOT under Part 150, were in compliance with applicable requirements. On December 19, 1986, the Administrator approved the Groton-New London Airport (GON) noise compatibility program. Out of the 16 proposed program elements, 15 were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the GON noise compatibility program is December 19, 1986.

FOR FURTHER INFORMATION CONTACT: M. Ashraf Jan, Federal Aviation Administration, New England Region, Airports Division, ANE–610, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273–7060.

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 GON noise compatibility program, effective December 19, 1986.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter 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 Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement 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 recomendations is measured according to the standards expressed in Part 150 and the Act, 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 of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

(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 as 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 Regional Office in Burlington, Massachusetts.

The CT DOT submitted to the FAA, on February 11, 1986, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 1984 through February 1986. The GON noise exposure maps were determined by FAA to be in compliance with applicable requirements on July 1, 1986. Notice of this determination was published in the Federal Register on July 11, 1986.

The GON 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 to beyond the year 1990. 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 it review of the program on July 1, 1986, and was required 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 disappove such a program within the 180 day period shall be deemed to be an approval of such a program.

The submitted program contained 16 proposed actions for noise mitigation on and off the airport. 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 approved by the Administrator effective December 19, 1986.

Approval was granted for 15 specific program elements. Program Element No. 2, "Adopt Noise Based Surcharge," has been disapproved pending submission to FAA for additional analysis. This measure was disapproved because it was not described in sufficient detail to allow an informed analysis by the FAA, under section 104(b) of the Act. This disapproval does not reflect an FAA determination with respect to the substance of the proposal. The measure may be reconsidered by the FAA if developed in greater detail and resubmitted by the CT DOT to the FAA under FAR Part 150. It was also determined that Element No. 6, "Implement Noise Abatement Flight Tracks," Element No. 7, "Lower Traffic Pattern Altitude," and Element No. 8, "Establish Helicopter Flight Corridors," will involve further FAA action to implement.

The approved program for GON contains the following: Airport operations related measures, including airport physical changes, airport management mesures, and airport and airspace procedural changes; land use control measures; and program implementation, monitoring, and review measures.

Specifically, the program include: An informal preferential runway use program to minimize flying over noise sensitive areas; restriction of touch and

go operations to reduce single event noise exposure during evening and nighttime; closing runway 10–28 to prevent low altitude flight over homes immediately west of the airport (this measure will not adversely affect the airport capacity and is consistent with the Airport Master Plan recommendations); construction of a noise barrier for maintenance runups; voluntary use restrictions on nighttime maintenance runups; implementation of noise abatement flight tracks to minimize noise exposure over residential areas; lowering traffic pattern altitude to achieve a modest reduction in the single event noise exposure to the outlying residences; establishing helicopter flight tracks; promoting "quiet flying" procedures through publicizing and information dissemination measures; publishing a noise abatement procedures manual; reviewing noise exposure annually; voluntary purchase of easement and rights of first refusal for five residences located within the Ldn 65 contour; installing airport signing as an informational/educational tool for pilots to comply with the nosie abatement measures; encouraging compatible use zoning by the Town of Groton to prevent future incompatible uses; and upgrading noise complaint review procedure so that the CT DOT could obtain a better appreciation for the extent and causes of noise complaints.

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 offices of the CT DOT, Bureau of Planning, 24 Wolcott Hill Road, Wethersfield, Connecticut 06109.

Issued in Burlington, Massachusetts, on April 17, 1987.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 87–10610 Filed 5–8–87; 8:45 am]

BILLING CODE 4910–13–M

Huntsville-Madison County Airport; Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Huntsville-Madison County Airport Authority 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 September 12, 1986, the FAA determined that the noise exposure maps submitted by the Huntsville-Madison County Airport under Part 150 were in compliance with applicable requirements. On March 11, 1987, the Administrator approved the Huntsville-Madison County Airport Noise Compatibility Program. Four of the five recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Huntsville-Madison County Airport Noise Compatibility Program is March 11, 1987.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, FAA/Airports District Office, FAA Building, Jackson Municipal Airport, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone no. (601) 965–4628. 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 noise compatibility program for Huntsville-Madison County Airport effective March 11, 1987.

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 Federal Aviation Regulations (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 the Act 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 District Office in Jackson, Mississippi.

Huntsville-Madison County Airport Authority submitted to the FAA on May 5, 1986, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 1983 through May 1986. The Huntsville-Madison County Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on September 12, 1986. Notice of this determination was

published in the **Federal Register** on October 6, 1986.

These determinations are set forth in detail in a Record of Approval signed by the Administrator on March 11, 1987. 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 administrative offices of the Huntsville-Madison County Airport Authority.

Issued in Jackson, Mississippi, on April 30, 1987.

Wayne Atkinson,

Acting Manager, Airports District Office, Southern Region, Jackson, Mississippi.

[FR Doc. 87-10611 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

Lambert-St. Louis International Airport; St. Louis, Mo.; Noise Exposure Map; Notice of Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of St. Louis for the Lambert-St. Louis International Airport (STL) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for STL under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 26, 1987.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is April 29, 1987. The public comment period ends June 29, 1987.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Ornes, FAA, Airports Division, ACE-615, 601 East 12th Street, Kansas City, MO 64106.

Comments on the proposed noise compatibility program should also be submitted on the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for STL are in compliance with applicable requirements of Part 150, effective April 29, 1987. Further, FAA is reviewing proposed noise compatibility program for that airport which will be approved or disapproved on or before October 26, 1987. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of the Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

St. Louis submitted to the FAA on February 17, 1987, noise exposure maps, descriptions, and other documentation which were produced during an airport noise compatibility planning study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by St. Louis. The specific maps under consideration are identified as "Exhibit F, 1986 Ldn Contours" and "Exhibit G, 1991 Ldn Contours" in the submission. The FAA has determined that these maps for STL are in compliance with applicable requirements. This determination is effective on April 29, 1987. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for STL, also effective on April 29, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 26, 1987.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise

exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC;

Federal Aviation Administration, Airports Division, ACE-600, 601 East 12th Street, Kansas City, MO 64106;

Lambert-St. Louis International Airport, Airport/Community Programs Office, 11101 Natural Bridge, Bridgeton, MO 63044.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Kansas City, Missouri, on April 29, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-10612 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Intent To Prepare Environmental Impact Statement, Will, DuPage, and Cook Counties, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a multi-lane (four or six) highway from Interstate Route 55 east of Bolingbrook extending southerly approximately 12 miles to Interstate Route 80 northwest of New Lenox, Illinois. The proposed project, which generally follows the previously recorded centerline for the Lake-Will Freeway (F.A.P. Route 61) in Will, DuPage, and Cook Counties, will be designated Federal-Aid Primary Route 431 (FAP 431).

FOR FURTHER INFORMATION CONTACT: James C. Partlow, District Engineer, Federal Highway Administration, 320 West Washington Street, 7th Floor, Springfield, Illinois 62701, Telephone (217) 492-4622. Cesar Nepomuceno, Chief, Bureau of Programming, Illinois Department of Transportation, 201 West Center Court, Schaumburg, Illinois 61096-1096, Telephone (312) 705-4393.

SUPPLEMENTARY INFORMATION: The Lake-Will Freeway was initially studied in the late 1960's and early 1970's. Presently, a section of the freeway from Army Trail Road south to Interstate Route 55 is under construction as a toll highway facility designated the North-South Tollway. The section under consideration is multi-lane access controlled facility. Dominant features along the route of the proposed facility include agricultural land, wetlands, stream crossings, the crossing of the Chicago Sanitary and Ship Canal, Des Plaines River, the Illinois Michigan Canal, and use of forest preserve district lands. Various options of profile, alignment, cross section, grade separations, possible interchange/intersection locations and access to adjacent existing and planned facilities by means of access roads of frontage roads will be studied.

Coordination meetings and a public hearing (November 19, 1969) were conducted as part of the earlier corridor study, which was printed in March 1970 as the Design Report. Coordination during that study was conducted with federal, state, regional, county, and local agencies, community organization, private industry, and the general public. Contacts, comments and input have been made made through a public involvement process of correspondence, telephone conversations, meetings, and public hearing.

Coordination meetings and a public hearing will be conducted as part of this study. Coordination will be undertaken with Federal, State, regional, metropolitan and local agencies, community organizations, public utilities and private industry.

Due to the ongoing nature of the coordination process, a formal scoping meeting is not anticipated. If new information indicates a need to define issues attendant to the proposed action, scoping activities will be conducted with specific resource agencies. To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects apply to this program)

James C. Partlow,

District Engineer, Springfield, IL.

[FR Doc. 87-10615 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Notice of Applications for Renewal or Modification of Exemptions or Applications To Become Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes May 27, 1987.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the application are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW, Washington, DC.

Application No.	Applicant	Renewal of exemption
2582-X	Ozark-Mahoning Co., Tulsa, OK	2582
3600-X	U.S. Department of Defense, Falls Church, VA	3600

Application No.	Applicant	Renewal of exemption
4453-X	ECONEXPRESS, Inc. Wheaton, IL	4453
5206-X	Austin Powder Co., Cleveland, OH	5206
6712-X	Air Products and Chemicals, Inc., Allentown, PA	6712
6752-X	ATOCHEM, Paris, France	6752
6902-X	Halocarbon, Products, Corp., North Augusta, SC	6902
6974-X	U.S. Department of Defense, Falls Church, VA	6974
7023-X	Texas Instruments, Inc., Dallas, TX	7023
7051-X	Ozark-Mahoning Company, Tulsa, OK	7051
7052-X	U.S. Department of Defense, Fort Monmouth, NJ [1]	7052
7052-X	Cubic Corp., San Diego, CA	7052
7052-X	Moli Energy, Limited, Burnaby, B.C., Canada [2]	7052
7482-X	Monsanto Co., Saint Louis, MO	7482
7555-X	Provost Cartage, Inc., Ville d'Anjou, Quebec	7555
7605-X	U.S. Department of Defense, Falls Church, VA	7605
7607-X	Ecology and Environment, Inc., Buffalo, NY	7607
7835-X	Lincoln Big Three, Inc., Baton Rouge, LA	7835
7835-X	Scott Specialty Gases, Plumsteadville, PA	7835
7951-X	Beatrice Cheese, Inc., New Berlin, WI	7951
8168-X	Container Corp. of America, Wilmington, DE	8168
8184-X	Austin Powder Co., Cleveland, OH	8184
8195-X	McDonnell Douglas Corp., Saint Louis, MO	8195
8214-X	Morton Thiokol, Inc., Ogden, UT	8214
8215-X	Olin Corp., East Alton, IL	8215
8225-X	Hoover Group, Inc., Beatrice, NE	8225
8232-X	GCS Container Service, SA, Chiasso, Switzerland	8232
8255-X	Applied Companies, San Fernando, CA	8255
8256-X	E.I. de Pont de Nemours & Co., Inc., Wilmington, DE	8256
8453-X	PACCO, Inc., Tenino, WA [3]	8453
8539-X	Aero Taxi-Rockford, Inc., Rockford, IL [4]	8539
8547-X	Natico, Inc., Chicago, IL	8547
8573-X	All Pure Chemical Co., Inc., Tracy, CA	8573
8609-X	Natico, Inc., Chicago, IL	8609
8614-X	Arrowhead Airways, Inc., Minneapolis, MN	8614
8667-X	Federal Emergency Management Agency, Washington, DC	8667
8678-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE [5]	8678
8684-X	Great Lakes Chemicals Corp., El Dorado, AR	8684
8693-X	CAN-TRO, Inc., Kansas City, MO	8693
8988-X	GOEX, Inc., Cleburne, TX	8988
8992-X	General Dynamics/ Pomona Division Aviation Dept., Pomona, CA	8992
8998-X	Oil-Air Industries, Inc., Brookshire, TX	8998
9004-X	Metric Corp., Tulsa, OK	9004
9010-X	United Technologies Corp., San Jose, CA	9010
9026-X	Continental Fibre Drum, Inc., Lombard, IL	9026
9027-X	McGean-Rohco, Inc., Cleveland, OH	9027
9034-X	Union Carbide Corp., Danbury, CT	9034
9040-X	Continental Fibre Drum, Inc., Lombard, IL	9040
9041-X	IRECO Inc., Salt Lake City, UT	9041
9048-X	Brooks Instrument Div./ Emerson Electric Co., Statesboro, GA [6]	9048
9061-X	SSI Group, Ltd., Fairfield, KY [7]	9061
9064-X	J.T. Baker Chemical Co., Phillipsburg, NJ	9064
9066-X	Bayern-Chemie GMBH [8]	9066
9072-X	Morton Thiokol, Inc., Brigham City, UT [9]	9072
9079-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE	9079
9108-X	Austin Powder Co., Cleveland, OH	9108
9192-X	Air Products and Chemicals, Inc., Allentown, PA	9192
9275-X	Carter-Wallace, Inc., Cranbury, NJ	9275
9275-X	A.H. Robins Co., Richmond, VA	9275
9275-X	Noxell Corp., Hunt Valley, MD	9275
9275-X	Avon Products, Inc., New York, NY	9275
9275-X	DuPont Critical Care, Inc., Waukegan, IL	9275
9275-X	Universal Fragrance Corp., South Plainfield, NJ	9275
9275-X	Liz Claiborne Cosmetics, North Bergen, NJ	9275
9275-X	Max Factor & Co., Oxford, NC	9275
9275-X	Halston Fragrances, Oxford, NC	9275
9275-X	Mary Kay Cosmetics, Dallas, TX	9275
9275-X	Firmenich, Inc., Princeton, NJ	9275
9275-X	Amway Corp., Ada, MI	9275
9275-X	Ortho Pharmaceutical Corp., Raritan, NJ	9275
9275-X	The Proctor & Gamble Distribution Co., Cincinnati, OH	9275
9275-X	Merrell Dow Pharmaceuticals, Inc., Cincinnati, OH	9275
9275-X	Warner-Lambert Co., Morris Plains, NJ	9275
9275-X	The Upjohn Co., Kalamazoo, MI	9275
9275-X	Sterling Drug, Inc., New York, NY	9275
9275-X	Fritzsche, Dodge & Olcott, Inc., New York, NY	9275
9370-X	NI Industries, Inc., Longview, TX	9370
9416-X	CIBA-GEIGY Corp., Ardsley, NY	9416
9537-X	Liquid Air Corp., Walnut Creek, CA [10]	9537
9632-X	Eurotainer S.A., Paris, France [11]	9632
9681-X	Space Ordnance Systems, Canyon Country, CA [12]	9681

[1] To authorize shipment of secondary (rechargeable) lithium batteries containing cells and series of cells connected in parallel without diodes.

[2] To authorize shipment of secondary (rechargeable) lithium batteries containing cells and series of cells connected in parallel without diodes.

[3] To authorize cargo vessel as an additional mode of transportation for shipment of certain blasting agents in bulk.

[4] To authorize pentaerythrite tetranitrate, Class A explosive, as an additional explosive for shipment in accordance with the provisions of DOT-E 6658.

[5] To renew and change six month shipping experience report requirement to two years to correspond with renewal application.

[6] To renew and to authorize flow tubes on mechanical displacement meters to be manufactured with type 304 and 17-4 PH stainless steel used for shipping flammable liquid or gas, n.o.s.

[7] To authorize shipment of up to six cans of calcium carbide, each container not exceeding two pounds net weight of material, within the prescribed shipping box.

[8] To authorize an additional airbag gas generator containing a flammable solid, n.o.s.

[9] To authorize shipment of additional rocket motors, Class B explosives, in an alternative non-DOT packaging design.

[10] To authorize an alternate outer shell on non-DOT specification portable tanks for shipment of helium refrigerated liquid classed as nonflammable gas.

[11] To exclude use of a rupture disk on portable tanks when the lading does not require a combination relief device.

[12] To authorize shipment of additional high explosives, Class A, in specially designed packaging.

Application No.	Applicant	Parties to exemption
4453-P	Quick Supply Co., Des Moines, IA	4453
6267-P	Grow Group, Inc., Montebello, CA	6267
6691-P	Jacksonville Welding Supply, Inc., Jacksonville, FL	6691
6824-P	Grow Group, Inc., Montebello, CA	6824
7051-P	Aldrich Chemical Co., Inc., Milwaukee, WI	7051
7495-P	Ethyl Corp., Baton Rouge, LA	7495
7943-P	Grow Group, Inc., Montebello, CA	7943
8451-P	Honeywell, Inc., Hopkins, MN	8451
8451-P	Quantic Industries, Inc., San Carlos, CA	8451
8451-P	Lockheed Missiles & Spaces Co., Inc., Palo Alto, CA	8451
8554-P	Quick Supply Co., Des Moines, IA	8554
8723-P	Explosives Supply Co., Inc., Shirley, MA	8723
8723-P	A.E. Sibley, Inc., Middletown, CT	8723
8723-P	Falconi Construction, Inc., dba Alpha Explosives Lincoln, CA	8723
8845-P	NL McCullough, Houston, TX	8845
8978-P	Yardney Electric Corp., Pawcatuck, CT	8978
9222-P	Clean Harbors of Kingston, Inc., Braintree, MA	9222
9275-P	DuPont Pharmaceuticals, Inc., Waukegan, IL	9275
9571-P	United State Department of Interior, Pittsburgh, PA	9571

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 4, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-10627 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-60-M

Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes June 10, 1987.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW, Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9762-N	Aqua-Tech, Inc., Port Washington, WI	49 CFR Part 173, Subpart D, E, F, H, Subpart K, L, O.	To authorize shipment of empty containers (5 gallon capacity or less) which contain residual amounts of various hazardous materials to be loaded, based on compatibility, in a bulk fiberboard box, lined with 0.006 inch polyethylene film, for disposal. (Mode 1)
9763-N	Air Products and Chemicals, Inc., Allentown, PA	49 CFR 173.247, 173.302(a)	To authorize shipment of certain nonflammable gas(es), corrosive material and flammable gas in DOT Specification 3BN cylinders. (Modes 1, 2.)
9764-N	United Technologies Corporation-Patt & Whitney, West Palm Beach, FL.	49 CFR 173.245(b)	To authorize a one time shipment of sodium hydroxide (a solid block weighing approximately 34,000 pounds), corrosive material, within a non-DOT specification steel tank affixed to a flatbed truck. (Mode 1.)
9765-N	3M, St. Paul, MN	49 CFR 173.124a	To authorize shipment of ethylene oxide, flammable liquid, contained in aluminum cartridges cushioned in specially molded expanded polystyrene foam trays overpacked in a fiberboard box. (Modes 1, 2, 3, 4.)
9766-N	Hercules Incorporated, Wilmington, DE	49 CFR 173.92(b) 175.3	To authorize shipment of rocket motors (TOW Launch Motors), Class B explosives, with igniter(s) installed. (Modes 1, 3, 4.)
9767-N	Tri-Wall, Division of Weyerhaeuser Company, Louiville, KY.	49 CFR 173.60, 173.64, 173.65, 173.93	To authorize shipment of certain Class A and B explosives in non-DOT specification triple-wall corrugated boxes containing a anti-static plastic bag. (Modes 1, 2.)
9768-N	Defence Technology and Procurement Agency, Berne, Switzerland.	49 CFR 172.101 column 6(b), 175.30	To authorize shipment of rocket ammunition with explosive projectile, Class A explosive by cargo aircraft only. (Mode 4.)
9769-N	Rollins Environmental Services (FS), Inc., Wilmington, DE.	49 CFR 173.12, 176.83	To authorize shipment of small quantities of various compatible hazardous materials (waste materials) contained in one overpack (lab pack) to be shipped by water without separation or segregation of material. (Mode 3.)
9770-N	AMSPEC Chemical Corporation, Gloucester City, NJ.	49 CFR 173.154(a) (2), 178.118	To authorize reusing DOT Specification 17H drums for multiple shipments of Sodium Methylate, dry, a flammable solid. (Mode 1.)
9771-N	Honewell Inc., Defense Systems Division, Hopkins, MN.	49 CFR 173.86	To authorize shipment, for disposal, of unclassified waste, scrap explosives, classed as Class C explosives, n.o.s. packaged in wood, metal or cardboard boxes, overpacked in a specially designed steel overpack. (Mode 1.)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9772-N	Tavco, Inc., Chatsworth, CA	49 CFR 173.302(a)(4), 175.3	To manufacture, mark and sell non-DOT specification cylinders comparable to DOT Specification 39 for shipment of argon or nitrogen, classed as nonflammable gas. (Modes 1, 2, 4.)
9774-N	Harcotar Limited, Hyde Park Holdings, Inc., Stamford, CT.	49 CFR 173.245b(a)(6), 173.365, 173.373(a)	To manufacture, mark and sell non-DOT specification open-head polyethylene drums of 55 gallon capacity for shipment of corrosive solids and poisons B solids authorized in DOT Specification 21C drums. (Modes 1, 2, 3.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 4, 1987.

J. Suzanne Hedgepeth, Chief,

Exemptions Branch Office of Hazardous Materials Transportation.

[FR Doc. 87-10628 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 13-87]

Treasury Bonds of 2017

Washington, April 30, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Bonds of 2017 (CUSIP No. 912810 DY 1), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated May 15, 1987, and will accrue interest from that date, payable on a semiannual basis on November 15, 1987, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 2017, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other non-business day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedure

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, May 7, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, May 6, 1987, and received no later than Friday, May 15, 1987.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A signle bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds;

international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be acepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment,which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the averge yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, May 5, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, May 13, 1987. In addition. Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, May 15, 1987. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the imformation required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability or Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Bonds. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates. Separation of Bonds into their components may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.3. The Principal Component will be payable on May 15, 2017.

6.4. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.5. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.6. Once a Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.7. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the

retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.8. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations govering United States securities apply to the Bonds separated into their components.

7. Reconstitution of STRIPS Components

7.1. On and after May 1, 1987, the Interest and Principal Components of securities separated and held under the Treasury's STRIPS program pursuant to Section 6 hereof may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks.

7.2. The Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amount previously announced, must be submitted together for reconstitution. Detached interest coupons, coupons held under the CUBES program (Coupons Under Book-Entry Safekeeping), or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS Components, in the appropriate amounts, will not be accepted.

7.3. The book-entry transfer of each Interest Component and its Principal Component will be subject to the fee schedule generally applicable to transfers to book-entry Treasury securities.

8. General Provisions

8.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

8.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplement or amendments to not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promply provided.

8.3. The Boards issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

8.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

BILLING CODE 4810-40-M

ATTACHMENT A

CUSIP NUMBERS AND DESIGNATIONS FOR THE
PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF
TREASURY BONDS OF MAY 15, 2017, CUSIP NO. 912810 DY 1

The Principal Component is designated
(Interest Rate) Treasury Principal (TPRN) 2017
due May 15, 2017, CUSIP No. 912803 AL 7

INTEREST COMPONENTS

DESIGNATION	CUSIP NUMBER 912833	DESIGNATION	CUSIP NUMBER 912833
Treasury Interest (TINT) due		Treasury Interest (TINT) due	
November 15, 1987	EK 2	November 15, 2002	FR 6
May 15, 1988	EL 0	May 15, 2003	FS 4
November 15, 1988	EM 8	November 15, 2003	FT 2
May 15, 1989	EN 6	May 15, 2004	FU 9
November 15, 1989	EP 1	November 15, 2004	FV 7
May 15, 1990	EQ 9	May 15, 2005	FW 5
November 15, 1990	ER 7	November 15, 2005	FX 3
May 15, 1991	ES 5	May 15, 2006	FY 1
November 15, 1991	ET 3	November 15, 2006	FZ 8
May 15, 1992	EU 0	May 15, 2007	GA 2
November 15, 1992	EV 8	November 15, 2007	GB 0
May 15, 1993	EW 6	May 15, 2008	GC 8
November 15, 1993	EX 4	November 15, 2008	GD 6
May 15, 1994	EY 2	May 15, 2009	GE 4
November 15, 1994	EZ 9	November 15, 2009	GF 1
May 15, 1995	FA 3	May 15, 2010	JU 5
November 15, 1995	FB 1	November 15, 2010	JV 3
May 15, 1996	FC 9	May 15, 2011	JW 1
November 15, 1996	FD 7	November 15, 2011	JX 9
May 15, 1997	FE 5	May 15, 2012	JY 7
November 15, 1997	FF 2	November 15, 2012	JZ 4
May 15, 1998	FG 0	May 15, 2013	KA 7
November 15, 1998	FH 8	November 15, 2013	KB 5
May 15, 1999	FJ 4	May 15, 2014	KC 3
November 15, 1999	FK 1	November 15, 2014	KD 1
May 15, 2000	FL 9	May 15, 2015	KE 9
November 15, 2000	FM 7	November 15, 2015	KF 6
May 15, 2001	FN 5	May 15, 2016	KH 2
November 15, 2001	FP 0	November 15, 2016	KK 5
May 15, 2002	FQ 8	May 15, 2017	KM 1

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 87-10706 Filed 5-7-87; 10:42 am]
BILLING CODE 4810-40-C

[Department Circular—Public Debt Series—No. 12-87]

Treasury Notes of May 15, 1997, Series A-1997

Washington, April 30, 1987.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of May 15, 1997, Series A-1997 (CUSIP No. 912827 UW O), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 15, 1987, and will accrue interest from that date, payable on a semiannual basis on November 15, 1987, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1997, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 6, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 5, 1987, and received no later than Friday, May 15, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be

accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, May 15, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, May 13, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, May 15, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Note are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Notes. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates. Separation of Notes into their components may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the Notes. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is recieved.

6.3. The Principal Component will be payable on May 15, 1997.

6.4. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.5. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additinal interest) on the next-succeeding business day.

6.6. Once a Note has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.7. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Note will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.8. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. Reconstitution of STRIPS Components

7.1. On and after May 1, 1987, the Interest and Principal Components of secruties separated and held under the Treasury's STRIPS program pursuant to Section 6 hereof may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks.

7.2. The Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amount previously announced, must be submitted together for reconstitution. Detached interest coupons, coupons held under the CUBES program (Coupons Under Book-Entry Safekeeping), or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS Components, in the appropriate amounts, will not be accepted.

7.3. The book-entry transfer of each Interest Component and its Principal Component will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

8. General Provisions

8.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

8.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

8.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fuly constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

8.4. Attachment A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

BILLING CODE 4810-40-M

ATTACHMENT A

CUSIP NUMBERS AND DESIGNATIONS FOR THE PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF TREASURY NOTES OF MAY 15, 1997, SERIES A-1997, CUSIP NO. 912827 UW 0

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series A-1997 due May 15, 1997, CUSIP No. 912820 AJ 6.

INTEREST COMPONENTS

DESIGNATION	CUSIP NUMBER 912833	DESIGNATION	CUSIP NUMBER 912833
Treasury Interest (TINT) due		Treasury Interest (TINT) due	
November 15, 1987	EK 2	November 15, 1992	EV 8
May 15, 1988	EL 0	May 15, 1993	EW 6
November 15, 1988	EM 8	November 15, 1993	EX 4
May 15, 1989	EN 6	May 15, 1994	EY 2
November 15, 1989	EP 1	November 15, 1994	EZ 9
May 15, 1990	EQ 9	May 15, 1995	FA 3
November 15, 1990	ER 7	November 15, 1995	FB 1
May 15, 1991	ES 5	May 15, 1996	FC 9
November 15, 1991	ET 3	November 15, 1996	FD 7
May 15, 1992	EU 0	May 15, 1997	FE 5

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

[FR Doc. 87-10707 Filed 5-7-87; 10:42 am]
BILLING CODE 4810-40-C

[Department Circular—Public Debt Series—No. 11-87]

Treasury Notes of May 15, 1990, Series T-1990

Washington, April 30, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of May 15, 1990, Series T-1990 (CUSIP No. 912827 UV 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated May 15, 1987, and will accrue interest from that date payable on a semiannual basis on November 15, 1987, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, May 5, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 4, 1987, and received no later than Friday, May 15, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline of receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amounts for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, started with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or

reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, May 15, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, May 13, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, May 15, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an account of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forefeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions.

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplement or amendments do not adversely affect existing righs of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-10708 Filed 5-7-87; 10:42 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 90
Monday, May 11, 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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, May 14, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY '89 Priorities

The staff will brief the Commission on Fiscal year 1989 priorities.

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.

Sheldon D. Butts,

Deputy Secretary.

May 5, 1987.

[FR Doc. 87-10699 Filed 5-6-87; 4:56 p.m.]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

May 6, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: May 13, 1987, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20424.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 856th Meeting—May 13, 1987, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 10227-001, City of Manassas, Virginia
CAP-2.
Project Nos. 9851-001 and 9852-001, Long Lake Energy Corporation
CAP-3.
Project No. 9756-001, Edward T. Navickis
CAP-4.
Omitted
CAP-5.
Omitted
CAP-6.
Project No. 3228-005, Atlantic Power Development Corporation
CAP-7.
Project Nos. 2934-008, 009 an 011, New York State Electric and Gas Corporation
Project Nos. 4684-004 and 005, Long Lake Energy Corporation
CAP-8.
Project No. 1930-006, Southern California Edison Company
CAP-9.
Project Nos. 2890-017, 019 and 020, Kings River Conservation District
CAP-10
Project No. 7719-003, Myron Jones, Nola Jones, Larry Oja and Christie Oja
CAP-11.
Omitted
CAP-12.
Project No. 3240-007, Briar-Hydro Associates and New Hampshire Water Resources Board.
CAP-13.
Docket No. ER87-327-000, Pacific Gas Electric Company
CAP-14.
Docket No. ER87-232-002, Boston Edison Company
CAP-15.
Docket Nos. ER84-579-008 and 009, AEP Generating Company
Docket Nos. EL86-10-002 and 003, Kentucky Power Company
CAP-16.
Docket Nos. ER87-115-002 and ER87-223-002, Southwestern Electric Power Company
CAP-17.
Docket No. ER86-684-003, Jersey Central Power and Light Company, Pennsylvania Electric Company, Metropolitan Edison Company, GPU Service Corporation and Niagara Mohawk Power Corporation
CAP-18.
Docket No. EL86-34-001, San Diego Gas & Electric Company v. Alamito Company, Osceola Energy, Inc., and Alamito Holdings, Inc.
Docket No. EL-36-001,Alamito Company Shareholder v. Alamito Company
CAP-19.
Docket No. EL87-23-001, Connecticut Yankee Atomic Power Company
CAP-20.
Docket No. QF83-196-002, Big Horn Energy Partners
CAP-21.
Docket Nos. ER87-69-002 and ER87-70-002, Southern California Edison Company
CAP-22.
Docket No. ER86-106-002, Idaho Power Company
Docket Nos. ER86-570-000 and 001, The Washington Water Power Company
CAP-23.
Docket No. ER86-450-001, Union Electric Company
CAP-24.
Docket No. EL87-16-000, Sierra Pacific Power Company
CAP-25.
Docket No. IR-000-1111, The City of Longmont, Colorado
Docket No. IR-000-772, The City of Loveland, Colorado
Docket No. IR-000-151, The Town of Estes Park, Colorado
Docket No. IR-000-433, The City of Fort Collins, Colorado
CAP-26.
Docket No. QF87-59-000, Panther Creek Energy, Inc.
CAP-27.
Docket No. QF86-964-001, First American Energy Company/Culmtech Ltd.

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA84-15-000, Minnesota Power & Light Company
CAM-2.
Docket No. GP82-38-000, Railroad Commission of Texas, Section 108 NGPA Determination, Conoco, Inc., Lucie Mae Wilson No. 21 Well, FERC No. JD81-09042
CAM-3.
Docket No. GP87-12-000, ANR Pipeline Company
CAM-4.
Docket No. GP86-2-001, Southern Union Company
CAM-5.
Docket No. RO86-29-000, Barkett Oil Company, *et al.*

Consent Gas Agenda

CAG-1.
Docket No. RP87-47-001, Phillips Gas Pipeline Company
CAG-2.
Docket Nos. RP86-52-009, 010, RP86-109-005 and 006, Kentucky West Virginia Gas Company
CAG-3.
Docket No. RP86-45-017, El Paso Natural Gas Company
CAG-4.
Docket No. TA86-5-29-006, Transcontinental Gas Pipe Line Corporation
CAG-5.
Docket No. TA86-5-29-005, Transcontinental Gas Pipe Line Corporation
CAG-6.

Docket No. RP87-7-007, Transcontinental Gas Pipe Line Corporation
CAG-7.
Docket No. RP86-157-000, El Paso Natural Gas Company
CAG-8.
Docket No. TA87-1-8-000, South Georgia Natural Gas Company
CAG-9.
Docket No. TA87-2-26-000 and 001, Natural Gas Pipeline Company of America
CAG-10.
Docket No. TA87-2-18-000, Texas Gas Transmission Corporation
CAG-11.
Omitted
CAG-12.
Docket Nos. TA86-3-22-000 and TA87-2-22-000, Consolidated Gas Transmission Corporation
CAG-13.
Docket Nos. RP81-82-000 and RP81-83-000, Columbia Gulf Transmission Company and Columbia Gas Transmission Corporation
CAG-14.
Docket Nos. RP81-49-024 and GT84-14-000, Natural Gas Pipeline Company of America
CAG-15.
Docket No. TA81-2-17-002, Texas Eastern Transmission Corporation
CAG-16.
Docket Nos. RP86-33-001 and RP86-91-001, Midwestern Gas Transmission Company
CAG-17.
Docket Nos. ST86-2681-000, ST86-1589-000, ST86-1597-000, ST86-1602-000, ST86-1934-000, ST86-2318-000, ST86-2321-000, ST86-2682-000, ST86-2684-000, ST86-2686-000, ST86-2693-000, ST86-2694-000, ST86-2695-000, ST86-2696-000, ST86-2697-000, ST86-2700-000, ST86-2702-000, ST86-2703-000, ST86-2704-000, ST87-14-000, ST87-15-000, ST87-29-000, ST87-112-000, ST87-113-000, ST87-121-000, ST87-122-000, ST87-466-000 and ST87-475-000, Delhi Gas Pipeline Corporation
CAG-18.
Docket Nos. ST87-844-000 and ST84-803-000, *et al.*, Delhi Gas Pipeline Corporation
CAG-19.
Docket No. ST87-887-000, Southern Gas Pipeline Company
CAG-20.
Docket No. ST87-892-000, Pentex Pipeline Company, Inc.
CAG-21.
Docket Nos. RI87-1-001 and 002, Exxon Corporation
CAG-22.
Docket No. CI86-138-001, Chevron U.S.A., Inc.
Docket No. CI86-295-001, Tenneco Oil Company
CAG-23.
Docket No. CP86-571-001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-24.
Docket No. CP85-608-009 and 010, National Fuel Gas Supply Corporation
CAG-25.
Docket No. CP86-505-001, East Tennessee Natural Gas Company
CAG-26.
Docket No. CP86-714-000, United Gas Pipe Line Company
CAG-27.
Docket Nos. CP86-621-000, CP86-632-000, CP86-667-000 and CP86-678-000, Natural Gas Pipeline Company of America
CAG-28.
Docket No. CP87-60-000, Lone Star Gas Company, a Division of ENSERCH Corporation
CAG-29.
Docket No. CP86-289-000, Northwest Pipeline Corporation

I. Licensed Project Matters

P-1.
Docket No. EL84-11-000, Aquenergy Systems, Inc. Petition requesting a finding of no jurisdiction over Coneross Project in South Carolina.

II. Electric Rate Matters

ER-1.
Docket No. QF86-512-001, Nelson Industrial Steam Company. Order on rehearing regarding application for certification as a small power production facility.

Miscellaneous Agenda

M-1.
Reserved
M-2.
Reserved
M-3.
Docket No. RM87-15-000, Regulations Implementing the National Environmental Policy Act of 1969. Notice of proposed rulemaking.
M-4.
Docket No. RM87-18-000, Waste Gas. Interpretative rule.
M-5.
Docket Nos. RM86-14-000 and RM84-12-000, Revisions to the Purchased Gas Adjustment Regulations. Notice of proposed rulemaking.
M-6.
Docket No. RM87-17-000, Natural Gas Data Collections System. Notice of proposed rulemaking.

I. Pipeline Rate Matters

RP-1.
(A) Docket No. RM87-5-000, Notice of Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Notice of proposed rulemaking (tentative).
(B) Docket Nos. CP86-232-000, CP86-486-000, CP86-504-000, CP86-551-000, CP86-573-000, CP86-598-000, CP86-645-000, CP86-655-000, CP86-660-000, CP86-669-000 CP86-670-000 and CP86-671-000, Panhandle Eastern Pipe Line Company
Docket No. CP86-584-000, Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Company
Docket No. CP86-663-000, Independent Petroleum Association of Mountain States v. Colorado Interestate Gas Company. Opinion on initial decision regarding transportation policies and practices.
(C) Docket Nos. CI86-168-001 and 002, Tenngasco Coproration and Tenngasco Exchange Corporation. Order on rehearing and reconsideration.
RP-2.
Docket Nos. RP82-71-017, TA83-1-59-006, TA84-1-59-005 and TA85-1-59-005, Northern Natural Gas Company, a Division of Enron Corporation. Opinion on initial decision concerning prudence of Northern's purchasing practice.
RP-3.
Docket No. TA81-1-21-022, Columbia Gas Transmission Corporation. Order on remand concerning Columbia's gas acquisition practices and cutback policy.
RP-4.
Docket Nos. TA85-1-29-011, TA85-3-29-027, TA86-1-29-009, TA86-5-29-010, TA87-1-29-004 and TA87-4-29-002, Transcontinental Gas Pipe Line Corporation. Order on contested settlement.

II. Producer Matters

CI-1.
Docket Nos. CP73-184-002 and CI73-485-002, Colorado Interstate Gas Company, a Division of Colorado Interstate Company and CIG Exploration, Inc. Order on initial decision concerning NGPA pricing.
CI-2.
Docket Nos. CI77-337-001 and G-14227-000, Union Texas Petroleum Corporation. Order on initial decision concerning abandonment.

III. Pipeline Certificate Matters

CP-1.
Docket No. CP86-275-000, East Tennessee Natural Gas Company. Request for section 7(c) authorization to construct pipeline facilities to serve Atlanta Gas Light.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-10774 Filed 5-7-87; 12:57 pm]

BILLING CODE 6717-01-M

NATIONAL SCIENCE FOUNDATION

National Science Board Meeting

DATE AND TIME: May 22, 1987

8:30 a.m. Closed Session
8:45 a.m. Open Session

PLACE: National Science Foundation Washington, DC.

STATUS:

Most of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED MAY 22:

Closed Session (8:30-8:45 a.m.)

1. Minutes—March 1987 Meeting
2. NSB and NSF Staff Nominees
3. Election of Executive Committee Members
4. Grants, Contracts, and Programs

Open Session (8:45–11:30 a.m.)

5. Grants, Contracts and Programs
6. Chairman's Report
7. Minutes—March 1987 Meeting
8. NSB Meeting Schedule for Calendar Year 1988
9. Director's Report
10. Annual Report of the Executive Committee
11. Discussion of Developments in Superconductivity
12. Interim Report of Committee on Centers and Individual Investigator Awards
13. Interim Report of Committee on NSF Role in Polar Regions
14. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 87–10784 Filed 5–7–87; 2:06 pm]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 11, 1987:

An open meeting will be held on Wednesday, May 13, 1987, at 3:00 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meetng scheduled for Wednesday, May 13, 1987, at 3:00 p.m., will be:

1. Consideration of whether to give delegated authority to the Director of the Division of Investment Management to issue notices of filing of applications for temporary and permanent orders under section 9(c) of the Investment Company Act of 1940 ("Act") where the Director has determined it is appropriate to exempt Applicants from the automatic bar of section 9(a) of the Act, for periods of time up to 60 days. For further information, please contact Curtis Hilliard at (202) 272–3026.
2. Consideration of whether to publish for comment proposed Rule 10b–21 under the Securities Exchange Act of 1934 pursuant to a petition for rulemaking by the National Association of Securities Dealers, Inc. The rule would prohibit covering short sales of an equity security effected during the period between the filing of a registration statement relating to the same class of equity securities and the commencement of the distribution of such equity securities with securities purchased from an underwriter or other broker or dealer participating in the offering of such securities. For further information, please contact Nancy J. Burke at (202) 272–2848.

The subject matter of the closed meeting scheduled for Wednesday, May 13, 1987, following the 3:00 p.m. open meeting, will be:

Institution of injunctive actions.
Subpoena enforcement action.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Litigation matter.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272–2149.

Jonathan G. Katz,

Secretary.

May 5, 1987.

[FR Doc. 87–10685 Filed 5–6–87; 4:14 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 52, No. 90
Monday, May 11, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

THE PRESIDENT

3 CFR

Proclamation 5646 of May 4, 1987

To Modify Duty-Free Treatment Under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, and the United States-Israel Free Trade Implementation Act, To Enable the Monitoring of Textile Agreements and for Other Purposes

Correction

In Presidential Proclamation 5646 beginning on page 16805 in the issue of Wednesday, May 6, 1987, make the following correction:

On page 16813, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 87–10435 Filed 5–4–87; 4:22 pm]

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1007, 1011, 1046, 1093, 1094, 1096, and 1098

[Docket Nos. AO-366-A28, et al.]

Milk in the Georgia and Certain Other Marketing Areas; Decision and Order To Terminate Processing on Proposed Amendments to Tentative Marketing Agreements and Orders

Correction

In proposed rule document 87-9882 beginning on page 15951 in the issue of Friday, May 1, 1987, make the following correction:

On page 15959, in the third column, in the seventh line from the bottom, insert "relevant evidence within his control raises a presumption against that" after "produce".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-274-FN]

Medicare Program; List of Covered Surgical Procedures for Ambulatory Surgical Centers

Correction

In notice document 87-8930 beginning on page 13176 in the issue of Tuesday, April 21, 1987, make the following corrections:

1. On page 13176, in the second column, in paragraph 1., the the last line, "417.65 (a)(1)" should read "416.65 (a)(1)".

2. On page 13179, in the first column, in the 26th line, "21400" should read "21040".

3. On the same page, in the first column, in the 20th line from the bottom, after "body" insert "metatarsophalangeal joint".

4. On page 13188, under the heading "Payment group", in the eighth line, "4" should read "3".

5. On page 13191, under the heading "CPT-4 code", in the eighth line under "Incision", "27075" should read "26075".

6. On page 13197, under the heading "Payment group", in the first line, insert "4".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Meetings

Correction

In notice document 87-9845, appearing on page 15992, in the issue of Friday, May 1, 1987, make the following corrections:

In the second column, in the fourth line, "Open" should read "Closed" and in the 12th line from the bottom, "Open" should read "Closed".

BILLING CODE 1505-01-D

federal register

Monday
May 11, 1987

Part II

Environmental Protection Agency

40 CFR Part 147

Underground Injection Control Programs on Indian Lands in Direct Implementation States; Technical Amendment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL 3150-3]

Underground Injection Control Programs on Indian Lands in Direct Implementation States; Technical Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule; technical amendment.

SUMMARY: The Environmental Protection Agency (EPA) is today clarifying the applicability of Federally-administered Underground Injection Control (UIC) programs prescribed previously. This action will have no substantive effect, but will eliminate an unintended ambiguity in the codified regulations. Elsewhere in today's **Federal Register**, the Agency is proposing new Underground Injection Control programs for all Indian lands not covered by an applicable UIC program.

DATES: Effective May 11, 1987. In accordance with 40 CFR Part 23, these regulations shall be considered final agency action for purposes of judicial review at 1:00 p.m. eastern time on May 26, 1987.

ADDRESS: The supporting information for these technical amendments will be available for inspection and copying at Room 1143 ET, 401 M Street, SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald M. Olson, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, EPA (WH-550E), 401 M Street, SW., Washington, DC 20460. (202) 382-5558.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act (SDWA) authorizes and obligates EPA to regulate underground injection activity on all lands in the United States, including Indian lands. Underground Injection Control (UIC) programs were proposed and promulgated for Indian lands in the following eleven States:

Alaska
Arizona (except Navajo's)
California
Colorado (except Class II wells on Ute Mountain Ute)
Idaho
Iowa
Michigan
Montana
Nebraska
Nevada
South Dakota

Explanatory language in the preambles to those proposed rules clearly indicated EPA's intent to include Indian lands in each Federal UIC program. 48 FR 40100 (September 2, 1983); 49 FR 20239 (May 11, 1984). The final rules confirmed that intent for the States listed above. 49 FR 20138 (May 11, 1984); 49 FR 45292 Nov. 15, 1984). In fact, the Regions have been implementing the Federal UIC program in these States where there are wells on Indian lands. However, the codification of the Federal program in 40 CFR Part 147 was not uniform concerning coverage of Indian lands. Today's notice will remove any ambiguity from the regulations by inserting into each program description a statement that it includes Indian lands.

EPA believes that this technical clarification need not be independently proposed before promulgation. It is eligible for the "good cause" exception to the Administrative Procedure Act (APA) requirement for prior notice and opportunity to comment. This may be waived "When the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553 (b)(B). "Unnecessary" means "Unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved." S. Doc. No. 248, 79th Cong., 2nd Sess. at 200, 258 (1946). This amendment is technical in the sense that it merely repeats in each of eleven subparts of Part 147, what the Agency has already proposed, promulgated and implemented. It will not change any legal rights or responsibilities.

EPA is today promulgating technical amendments to show explicitly that the Federal UIC programs in the above States include Indian lands in those States.

Office of Management and Budget Review

The Administrator has determined that this is not a major regulation under the terms of E.O. 12291 and does not require a regulatory impact analysis.

It has no independent legal effect and thus will impose no additional costs. Likewise, there are no impacts on small entities as defined under the Regulatory Flexibility Act.

As required by the Paperwork Reduction Act, all wells on these Indian lands were included in the original ICR approval by OMB. However, the original approval is due to expire soon. A request for approval of the information collection provisions contained in this rule will shortly be submitted to OMB as a part of a comprehensive ICR package covering all UIC information requests. The submission to OMB will be announced in the **Federal Register** and interested citizens will have an opportunity to comment at that time.

List of Subjects in 40 CFR Part 147

Indian lands, Underground injection.

Dated April 24, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—[AMENDED]

1. The authority citation for Part 147 is revised to read as follows:

Authority: Safe Drinking Water Act (42 U.S.C. 300h) as amended; and the Resource Conservation and Recovery Act as amended (42 U.S.C. 6901 *et seq.*) unless otherwise noted.

2. In 40 CFR Part 147, Subpart C—*Alaska*, § 147.101 is revised to read as follows:

§ 147.101 EPA-administered program.

(a) *Contents.* The UIC program in the State of Alaska for Classes I, III, IV and V wells, and for all classes of wells on Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts

124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection wells owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for all non-Class II wells in Alaska and for all wells on Indian lands, is June 25, 1984.

3. Subpart D—*Arizona* is amended by revising § 147.151 as follows:

§ 147.151 EPA-administered program.

The UIC program for the State of Arizona is administered by EPA.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on all Indian lands, is administered by EPA. The program for all injection activity, except that on Navajo Indian lands, consists of the UIC program requirements of 40 CFR Parts 124, 144 and 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program in Arizona, except for the lands of the Navajo Indians, is June 25, 1984.

4. Subpart F—*California* is amended by revising § 147.250 introductory text, and § 147.251 to read as follows:

§ 147.250 State-administered program—Class II wells.

The UIC program for Class II wells in the State of California, except those on Indian lands, is the program administered by the California Division of Oil and Gas, approved by EPA pursuant to SDWA section 1425.

* * * * *

§ 147.251 EPA-administered program—Class I, III, IV and V wells and Indian lands.

(a) *Contents.* The UIC program for the State of California for Class I, III, IV and V wells, and for all classes of wells on Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for all lands in California, including Indian lands, is June 25, 1984.

5. Subpart G—*Colorado,* § 147.301 is revised to read as follows:

§ 147.301 EPA-administered program—Class I, III, IV, V wells and Indian lands.

(a) *Contents.* The UIC program for Class I, III, IV, and V wells on all lands in Colorado, including Indian lands, and for Class II wells on Indian lands, is administered by EPA. The program for all EPA-administered wells in Colorado other than Class II wells on lands of the Ute Mountain Ute consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on all lands in Colorado, including Indian lands, except for Class II wells on lands of the Ute Mountain Ute, is June 25, 1984.

6. In Subpart N—*Idaho,* § 147.651 is revised to read as follows:

§ 147.651 EPA-administered program.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Idaho is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Idaho is June 11, 1984.

7. In Subpart Q—*Iowa,* § 147.801 is revised to read as follows:

§ 147.801 EPA-administered program.

(a) *Contents.* The UIC program for the State of Iowa, including Indian lands, is administered by EPA. This program consists of the requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for all lands in Iowa, including Indian lands, is June 25, 1984.

8. In Subpart X—*Michigan,* § 147.1151 is revised to read as follows:

§ 147.1151 EPA-administered program.

(a) *Contents.* The UIC program for the State of Michigan, including all Indian lands, is administered by EPA. This program consists of the program requirements of 40 CFR Parts 124, 144 and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for all lands in Michigan, including Indian lands, is June 25, 1984.

9. In Subpart BB—*Montana,* § 147.1351 is revised to read as follows:

§ 147.1351 EPA-administered program.

(a) *Contents.* The UIC program for the State of Montana, including all Indian lands, is administered by EPA. This program consists of the program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on all lands in Montana, including all Indian lands, is June 25, 1984.

10. Subpart CC—*Nebraska* is amended by revising § 147.1400 introductory text, and § 147.1401 introductory text, and by adding a new § 147.1403 to read as follows:

§ 147.1400 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Nebraska, except those on Indian lands, is the program administered by the Nebraska Oil and Gas Conservation Commission, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

§ 147.1401 State administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Nebraska, except those on Indian lands, is the program administered by the Nebraska Department of Environmental Control, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.1403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Nebraska is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian Lands in Nebraska is June 25, 1984.

11. In Subpart DD—*Nevada,* § 147.1451 is revised to read as follows:

§ 147.1451 EPA-administered program.

(a) *Contents.* The UIC program for the State of Nevada, including Indian lands, is administered by EPA. This program consists of the requirements of 40 CFR

Parts 124, 144, 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on all lands in Nevada, including Indian lands, is June 25, 1984.

12. In Subpart QQ—*South Dakota*, § 147.2101 is revised to read as follows:

§ 147.2101 EPA-administered program.

(a) *Contents.* The UIC program for all Class I, III, IV and V wells, including those on Indian lands, and for Class II wells on Indian lands in the State of South Dakota is administered by EPA. This program consists of 40 CFR Parts 124, 144 and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Class I, III, IV and V wells on all lands in South Dakota, including Indian lands, and for Class II wells on Indian lands only, is December 30, 1984.

[FR Doc. 87-10046 Filed 5-8-87; 8:45 am]

BILLING CODE 6560-50-M

federal register

Monday
May 11, 1987

Part III

Environmental Protection Agency

40 CFR Part 147

Water Pollution Control; Underground Injection Control Programs on Indian Lands; Proposed Rule

Parts 124, 144, 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on all lands in Nevada, including Indian lands, is June 25, 1984.

12. In Subpart QQ—*South Dakota*, § 147.2101 is revised to read as follows:

§ 147.2101 EPA-administered program.

(a) *Contents.* The UIC program for all Class I, III, IV and V wells, including those on Indian lands, and for Class II wells on Indian lands in the State of South Dakota is administered by EPA. This program consists of 40 CFR Parts 124, 144 and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Class I, III, IV and V wells on all lands in South Dakota, including Indian lands, and for Class II wells on Indian lands only, is December 30, 1984.

[FR Doc. 87-10046 Filed 5-8-87; 8:45 am]

BILLING CODE 6560-50-M

federal register

Monday
May 11, 1987

Part III

Environmental Protection Agency

40 CFR Part 147

Water Pollution Control; Underground Injection Control Programs on Indian Lands; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL 3150-1]

Water Pollution Control; Underground Injection Control Programs on Indian Lands

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to extend the Federal Underground Injection Control (UIC) program to most Indian lands not currently regulated under the authority of the Safe Drinking Water Act (SDWA) as mandated by the SDWA amendments of 1986. EPA proposes to bring the relatively few injection wells on these Indian lands under the standards for construction, operation, and plugging contained in the generic Federal program. Elsewhere in today's **Federal Register**, EPA is making technical amendments to clarify the applicability of the UIC program to Indian lands in certain other States, and proposing different programs for the lands of the Navajo, Ute Mountain Ute and other Tribes in New Mexico and Oklahoma.

Today's notice does not propose procedures by which Indian Tribes may apply for primary enforcement responsibility. That issue will be addressed later.

DATES: Comments must be submitted on or before June 25, 1987. Public hearing will be held June 2, 1987, 9:00 a.m.; requests to testify must be received on or before May 27, 1987.

ADDRESSES: Comments and requests to testify may be mailed to Judy Long, Comment Clerk, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, EPA (WH-550E) 401 M Street, SW, Washington, D.C. 20460. The supporting information for this proposal is available for inspection and copying in Room 1143 ET, 401 M Street, SW, Washington, D.C. 20460. The hearing will be held in Conference Room 3 of the Washington Information Center, 401 M Street, SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Donald M. Olson, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, (202) 382-5558, at the above address.

SUPPLEMENTARY INFORMATION:

Background

The Safe Drinking Water Act (SDWA) authorizes and obligates EPA to regulate underground injection activity on all lands in the United States, including Indian lands. (EPA has adopted the definition of Indian country in 18 U.S.C. 1151, set forth in full at 40 CFR 144.3 for the Underground Injection Control (UIC) program.)

The SDWA directs EPA to set minimum standards and criteria for approval of State-developed programs. (§ 1421 SDWA). States may develop programs regulating their injection wells, and EPA reviews and approves them pursuant to § 1422 or § 1425 of the SDWA if they meet the standards. This is called granting primary enforcement responsibility. If a State does not submit a program or if a submitted program does not meet statutory and regulatory standards, the EPA directly administers the program for the State under the regulations codified in 40 CFR Parts 124, 144, and 146. This is referred to as "direct implementation". At the moment there are 33 full and 6 partial programs for which a State has primary enforcement responsibility. EPA promulgated the Federal program for the direct implementation jurisdictions in May and November of 1984.

Indian lands did not fit neatly into the system of approved and directly implemented programs. For the reasons outlined below, many Indian lands, particularly those in States with primary enforcement responsibility are not currently covered by an Underground Injection Control program under the authority of the SDWA. The SDWA Amendments of 1986 require EPA to promulgate a UIC program within 270 days of enactment for all Indian lands in which there is no currently applicable UIC program. Today's proposal to extend the Federal program set forth in 40 CFR Parts 124, 144, and 146 is one step in fulfilling that mandate.

Indian lands in States with Primary Enforcement Responsibility

A gap developed in States with primary enforcement responsibilities because of the special legal and policy problems presented by Indian lands. Most States could not or did not assert jurisdiction over Indian lands, and thus could not administer a UIC program on those lands. The Indian Tribes themselves could not administer a UIC program under the jurisdiction of the SDWA because the SDWA did not give them the authority to do so until the 1986 Amendments. (However, it was and is Agency policy to accommodate the wishes of the Tribal governments as far as possible, to deal with them on a government-to-government basis, and to assist them in developing the capability to manage their own environmental programs. See the EPA Indian Policy statement of November 8, 1984). The Federal government could not administer the State-developed programs on Indian lands because in many cases they contained provisions inconsistent with Federal powers. (For example, reliance on administrative orders or pipeline severance to enforce the program.) Some members of the underground injection industry were very interested in having the programs on Indian lands match those in the surrounding State, and not be either special programs reflecting local Tribal conditions and needs or the Federal program.

It appeared that no single approach would work in all cases so EPA announced four possibilities for promulgation of programs on Indian lands and solicited comments on them. The four options were:

1. The current Federal UIC minimum requirements;
2. Requirements patterned after the approved State program, to the extent consistent with EPA's authority under the SDWA;
3. A combination of the first two; or
4. A different program containing requirements that respond to the concerns of the affected Tribal government.

The options were discussed in detail in **Federal Register** notices on September 2, 1983 (48 FR 40100) and May 11, 1984 (49 FR 20340). For the reasons discussed below, EPA is adopting Option 1 in this proposed rule. Accordingly, EPA would extend the Federal UIC requirements to Indian lands in the following States which have primary enforcement responsibility for non-Indian lands:

Alabama
Arkansas
Connecticut
Delaware
Florida
Georgia
Illinois
Louisiana
Maine
Maryland
Massachusetts
Mississippi
Missouri
New Hampshire
New Jersey
North Carolina
North Dakota
Ohio
Oregon
Rhode Island
South Carolina
Texas
Utah
Vermont
Washington
West Virginia
Wyoming
Guam
Commonwealth of the Northern Mariana Islands

Many comments responding to the 1983 notice indicated a preference for a program consistent with the relevant State program or a program tailored to tribal concerns. However, a State's legislative authority in its UIC program

is often broader than EPA's authority under the SDWA and, therefore, many State provisions could not be adapted by EPA. A hybrid program combining aspects of the State and Federal program would not provide consistency. The permittee would have to contend with provisions different from the State program and EPA would have to administer provisions not found in the generic Federal program. On balance, EPA prefers to maintain consistency within the Federal programs unless specific deviations are necessitated by local conditions or Tribal concerns. Tailoring a program requires a great deal of work with the Tribe, State, and other affected parties. EPA is open to future proposals for such tailoring. However, given the mandate of the 1986 SDWA Amendments to promulgate UIC programs on all Indian lands 270 days from the Amendments, EPA believes extending the generic Federal program is the appropriate course of action at this time for most Indian lands.

Most Tribes have not actively sought special programs for the regulation of their wells and thus are not expected to object to the proposal to extend the Federal program to their lands. However, the Navajo, Ute Mountain Ute, and some other Indian Tribes in New Mexico and Oklahoma continually pursued special UIC programs. EPA has been working with those Tribes to develop programs based upon the Federal UIC program, but containing some modifications and additions. Tailored programs for these Indian Tribes are proposed elsewhere in today's **Federal Register** (and conforming amendments to descriptions of their State programs are included in this proposal). Modified programs may be developed for other Indian lands in the future at the request of the Tribe.

The SDWA Amendments allow Indian Tribes to apply for and assume primary enforcement responsibility once EPA has promulgated regulations governing that process. The status of primary enforcement authority will give Indian Tribes additional opportunity for control and modification of the UIC program on their lands. Today's action does not preclude Tribes from applying for primary enforcement responsibility.

Indian Programs for Direct Implementation States

EPA is also proposing to extend the Federal UIC program to Indian lands in the Direct Implementation State of New York to the lands of the Seneca Indian Tribe. The Seneca Indian lands were not covered by the UIC program administered by EPA for New York because the Seneca Tribe had expressed interest in having special regulations developed. However, recent contacts with the Tribe indicate that special UIC regulations are not currently a priority of the Tribe. Therefore, the Federal UIC program is being proposed for the Seneca lands. In eleven other Direct Implementation jurisdictions, no UIC program was previously promulgated because there did not appear to be any wells on the Indian lands, and in some cases, no Indian lands at all:

District of Columbia	Virginia
Hawaii	Puerto Rico
Indiana	Virgin Islands
Kentucky	American Samoa
Pennsylvania	Trust Territory of the Pacific Islands
Tennessee	

(Note the difference in treatment of these States in the May 11, 1984 and November 15, 1984 preambles and those for which EPA clearly intended to include Indian lands.)

EPA is today proposing UIC programs for any Indian lands which now exist or may exist in the future in these States. Indian Tribes are seeking to acquire lands in some of these States. In the interests of consistency and to provide for future contingencies, it is appropriate to enact the programs covering all lands now.

Washington

EPA is today proposing to administer the generic Federal program on Indian lands in the State of Washington, although the State of Washington submitted an application for primary enforcement authority over Indian lands within the State as a part of its original application for primary enforcement authority. EPA will make a final decision on the portion of the application concerning Indian lands in the near future and will thereafter make any necessary changes in this proposal. It may be noted that one Tribe in Washington, the Colville, has requested a ban on all injection wells except Class V.

Aquifer Exemptions for Wind River Reservation in Wyoming

The SDWA protects all underground sources of drinking water, whether or not specifically designated as such. The regulations define "underground source of drinking water" very broadly as: an aquifer which supplies or has sufficient capacity to supply a public water system; and either currently supplies drinking water for human consumption, or contains less than 10,000 mg/1 TDS; and is not an exempted aquifer. Under existing regulations, EPA may exempt from the UIC program aquifers which have the capacity to supply public water systems and contain less than 10,000 mg/l TDS if they do not now and could not in the future serve as a source for a public water supply for one of the reasons recognized in the regulations (40 CFR 146.4). Owners and operators of injection wells may inject into an exempted aquifer.

EPA has information that some two hundred Class II wells, mostly enhanced recovery wells, are currently injecting into aquifers with less than 10,000 TDS on the Wind River Reservation in Wyoming. Most of these aquifers will probably qualify for exempted aquifer status. However, unless the Agency designates them as exempted aquifers, injection into them becomes illegal on the day the UIC program takes effect. It is EPA's intent to exempt the appropriate portions of some aquifers at the time of promulgation of the UIC program so that appropriate injection operations may continue without disruption.

There are currently eight separate oil and gas fields where injection is practiced on the Wind River Indian Reservation. The formations receiving injections are: the Darwin Sandstone (part of the Amsden); the Tensleep; the Crow Mountain (part of the Chugwater Group); the Phosphoria (also known as the Park City); the Muddy; the Nugget Sandstone; and the Frontier. The Tensleep, Phosphoria, Nugget and Frontier are the major aquifers associated with injection activity, while the Darwin, Muddy and Crow Mountain are relatively minor water-bearing zones. Available data indicates that all of these aquifers contain water with less than 10,000 milligrams per liter of total dissolved solids and therefore meet the definition of underground sources of drinking water (USDW's).

Most of the aquifers in question serve as the injection zone for enhanced recovery wells, and by their nature, are hydrocarbon producing zones. To the best of our knowledge, the formations are not now used as sources of drinking water, and because of their hydrocarbon content are not expected to be used for these purposes in the future.

Exemptions are being made for the entire oil and gas fields affected. This will allow for construction of additional Class II injection wells within the exempted areas without the need for future exemptions (although other program requirements, including permitting, must be adhered to). However, the exemptions are limited to the intended injection formations, and to Class II injection.

These exemptions will become effective 30 days after publication of the final rule in the **Federal Register**. Public comment is invited, particularly if

information is available to show that any of the formations being exempted are currently serving as sources of drinking water, or if there is other current injection activity into underground sources of drinking water where exemptions are not proposed.

Request for Comment

EPA requests comment on its proposal to extend the Federal UIC program to currently unregulated Indian lands. Please note that while comments on the applicability of the generic Federal regulations to these Indian lands are timely, comments on the generic provisions themselves will not be accepted. EPA is particularly interested in knowing which other Indian Tribes may need special programs, and which are contemplating applying for primary enforcement responsibility. If Tribes request additional special programs during the comment period, EPA intends nevertheless, to promulgate the generic Federal program for their lands, to provide regulation while such programs are researched and developed.

Office of Management and Budget Review

The Administrator has determined that this is not a major regulation under the terms of E.O. 12291 and does not require a regulatory impact analysis. This proposal would extend to a very small number of wells the Federal regulations already judged not to be major, even when applied to all injection wells in the country. However, this regulations was submitted to OMB for review as required by Executive Order 12291.

The original proposal for the generic Federal program concluded that the Federal UIC program would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 605(b)). The extension of those generic regulations to a very few owners and operators, of whom only some are "small entities", will not change the original assessment.

All wells on Indian lands were included in the original approval by OMB of information collection provisions in the generic regulations. However, the original approval will expire soon. The wells covered by this proposal are included in a new, comprehensive ICR package that is being prepared. Submission of that package to OMB will be announced in the **Federal Register** and interested parties will have an opportunity to comment on it at that time. Comment will be discussed in the preamble to the final UIC Indian lands regulations.

List of Subjects in 40 CFR Part 147

Indian lands, Underground Injection.

Dated: April 24, 1987.

Lee M. Thomas,

Administrator.

For these reasons set out in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 147 is proposed to be revised to read as follows:

Authority: Safe Drinking Water Act (42 U.S.C. 300h) as amended; and the Resource Conservation and Recovery Act as amended (42 U.S.C. 6901 *et seq.*) unless otherwise noted.

2. 40 CFR Part 147, Subpart B—*Alabama*, is proposed to be amended by revising §§ 147.50 introductory text, and 147.51 introductory text and by adding § 147.60 to read as follows:

§ 147.50 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Alabama, except those on Indian lands, is the program administered by the State Oil and Gas Board of Alabama, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

§ 147.51 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Alabama, except those on Indian lands, is the program administered by the Alabama Department of Environmental Management, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.60 EPA-administered program—Indian land.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Alabama is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Alabama is (30 days after publication of the final rule in the **Federal Register**).

3. Subpart D—Arizona is proposed to be amended by revising § 147.151 to read as follows:

§ 147.151 EPA-administered program.

The UIC program for the State of Arizona is administered by EPA.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on all Indian lands, is administered by EPA. The UIC program for Navajo lands consists of the requirements contained in Subpart HHH of this Part. The program for all injection activity, except that on Navajo Indian lands, consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective Dates.* The effective date for the UIC program in Arizona, except for the lands of the Navajo Indians, is June 25, 1984. The effective date for the UIC program on the lands of the Navajo is (30 days after publication of the final rule in the **Federal Register**).

4. Subpart E—Arkansas is proposed to be amended by revising § 147.200 introductory text, and by adding § 147.205 to read as follows:

§ 147.200 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Arkansas, except those wells on Indian lands, is the program administered by the Arkansas Department of Pollution Control and Ecology approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Arkansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Arkansas is (30 days after publication of the final rule in the **Federal Register**).

5. Subpart H—Connecticut is proposed to be amended by adding a new § 147.353 to read as follows:

§ 147.353 EPA-administered program.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Connecticut is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners

and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Connecticut is (30 days after publication of the final rule in the **Federal Register**).

6. Subpart I—Delaware is proposed to be amended by adding a new § 147.403 to read as follows:

§ 147.403 EPA-administered program.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Delaware is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Delaware is (30 days after publication of the final rule in the **Federal Register**).

7. In Subpart J—District of Columbia, § 147.451 is proposed to be revised to read as follows:

§ 147.451 EPA-administered program.

(a) *Contents.* The UIC program for the District of Columbia including any Indian lands in the District, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in the District of Columbia is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program in the rest of the District is June 25, 1984.

8. In Subpart K—Florida, § 147.500 introductory text, and § 147.501 are proposed to be revised to read as follows:

§ 147.500 State-administered program—Class, I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Florida, except those on Indian lands, is the program administered by the Florida Department of Environmental Regulations, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.501 EPA-administered program—Class II wells and Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the State of Florida is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Florida is (30 days after publication of the final rule in the **Federal Register**). The effective date for Class II wells on non-Indian lands is December 30, 1984.

9. Subpart L—Georgia is proposed to be amended by adding a new § 147.553 to read as follows:

§ 147.553 EPA-administered program.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Georgia is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Georgia is (30 days after publication of the final rule in the **Federal Register**).

10. In Subpart M—Hawaii, § 147.601 is proposed to be revised to read as follows:

§ 147.601 EPA-administered program.

(a) *Contents.* The UIC program for the State of Hawaii,including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Hawaii is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program for all other lands in Hawaii is December 30, 1984.

11. In Subpart O—Illinois, §§ 147.700 introductory text, and 147.701 introductory text, are proposed to be revised and § 147.703 is proposed to be added to read as follows:

§ 147.700 State-administered program—Class I, III, IV and V Wells.

The UIC program for Class I, III, IV and V wells in the State of Illinois, except those on Indian lands, is the program administered by the Illinois Environmental Protection Agency, approved by EPA pursuant to Section 1422 of the SDWA.

* * * * *

§ 147.701 State-administered program—Class II Wells.

The UIC program for Class II wells in the State of Illinois, except those on Indian lands, is the program administered by the Illinois Environmental Protection Agency, approved by EPA pursuant to Section 1425 of the SDWA.

* * * * *

§ 147.703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for the State of Illinois on Indian lands in Illinois is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for Indian lands is (30 days after publication of the final rule in the **Federal Register**).

12. In Subpart P—Indiana, § 147.751 is proposed to be revised to read as follows:

§ 147.751 EPA-administered program.

(a) *Contents.* The UIC program for the State of Indiana, including all Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**). The effective date of the UIC program for the rest of Indiana is June 25, 1984.

13. In Subpart S—Kentucky, § 147.901 is proposed to be revised to read as follows:

§ 147.901 EPA-administered program.

(a) *Contents.* The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program in the remainder of Kentucky is June 25, 1984.

14. Subpart T—Louisiana is proposed to be amended by adding a new § 147.951 to read as follows:

§ 147.951 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Louisiana is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Louisiana is (30 days after publication of the final rule in the **Federal Register**).

15. Subpart U—Maine is proposed to be amended by revising the introductory text of § 147.1000 and by adding a new § 147.1001 to read as follows:

§ 147.1000 State-administered program.

The UIC program for Class I, II, III, IV and V wells in the State of Maine, except those on Indian lands, is the program administered by the Maine Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.1001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Maine is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Maine is (30 days after publication of the final rule in the **Federal Register**).

16. Subpart V—Maryland is proposed to be amended by adding a new § 147.1053 as follows:

§ 147.1053 EPA-administered program.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Maryland is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Maryland is (30 days after publication of the final rule in the **Federal Register**).

17. Subpart W—Massachusetts is proposed to be amended by revising the introductory text of § 147.1100 and by adding a new § 147.1101 to read as follows:

§ 147.1100 State-administered program.

The UIC program for Class I, II, III, IV and V wells in the State of Massachusetts, except those on Indian lands, is the program administered by the Massachusetts Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.1101 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Massachusetts is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Massachusetts is (30 days after publication of the final rule in the **Federal Register**).

18. Subpart Z—Mississippi is proposed to be amended by revising § 147.1250 introductory text, and § 147.1251 to read as follows:

§ 147.1250 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Mississippi, except those on Indian lands, is the program administered by the Mississippi Department of Natural Resources, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.1251 EPA-administered program—Class II wells and Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on all lands in Mississippi is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Class II wells in Mississippi is December 30, 1984. The effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**).

19. Subpart AA—Missouri is proposed to be amended by revising the introductory text of § 147.1300 and by adding a new § 147.1303 to read as follows:

§ 147.1300 State-administered program.

The UIC program for all classes of wells in the State of Missouri, except those on Indian lands, is administered by the Missouri Department of Natural Resources, approved by EPA pursuant to section 1422 and 1425 of the SDWA.

* * * * *

§ 147.1303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for the State of Missouri for all classes of wells on Indian lands is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for Indian lands is (30 days after publication of the final rule in the **Federal Register**).

20. Subpart EE—New Hampshire is proposed to be amended by revising the introductory text of § 147.1500 and by adding a new §147.1501 to read as follows:

§ 147.1500 State-administered program.

The UIC program for Class I, II, III, IV and V wells in the State of New Hampshire, except those on Indian lands, is the program administered by the New Hampshire Water Supply and Pollution Control Commission, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.1501 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Hampshire is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and

EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in New Hampshire is (30 days after publication of the final rule in the **Federal Register**).

21. Subpart FF—New Jersey is proposed to be amended by revising the introductory text of § 147.1550 and by adding a new § 147.1551 to read as follows:

§ 147.1550 State-administered program.

The UIC program for Class I, II, III, IV and V wells in the State of New Jersey, except those on Indian lands, is the program administered by the New Jersey Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.1551 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Jersey is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in New Jersey is (30 days after publication of the final rule in the **Federal Register**).

22. Subpart GG—New Mexico is proposed to be amended by revising the introductory text of §§ 147.1600 and 147.1601 and by adding a new § 147.1603 to read as follows:

§ 147.1600 State-administered program—Class II wells.

The UIC program for Class II wells in the State of New Mexico, except for those on Indian lands, is the program administered by the New Mexico Energy and Minerals Department, Oil Conservation Division, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

§ 147.1601 State administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V injection wells in the State of New Mexico, except for those on Indian lands, is the program administered by the New Mexico Water Quality Control Commission, the Environmental Improvement Division, and the Oil Conservation Division, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.1603 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Mexico is administered by EPA. The program consists of the requirements set forth at Subpart HHH of this part. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in New Mexico is (30 days after publication of the final rule in the **Federal Register**).

23. Subpart HH—New York is proposed to be amended by revising § 147.1651 and removing § 147.1660 as follows:

§ 147.1651 EPA-administered program.

The UIC program for the State of New York, including all Indian lands, is administered by EPA.

(a) *Contents.* The UIC program that applies to all injection activities in New York, including Indian lands, consists of the UIC program requirements in 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for New York for all injection activities except those on lands of the Seneca Indian Tribe is June 25, 1984. The effective date for the UIC program for the lands of the Seneca Indian Tribe is (30 days after publication of the final rule in the **Federal Register**).

§147.1660 [Removed]

24. Subpart II—North Carolina is proposed to be amended by adding a new §147.1703 to read as follows:

§ 147.1703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in North Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in North Carolina is (30 days after publication of the final rule in the **Federal Register**).

25. Subpart JJ—North Dakota is proposed to be amended by revising the introductory text of §147.1750 and by adding to §147.1752 as follows:

§ 147.1750 State-administered program—Class II wells.

The UIC program for Class II wells in the State of North Dakota, except those on Indian lands, is the program administered by the North Dakota Industrial Commission, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

§ 147.1752 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in North Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and opertors and EPA shall comply with these requirements.

(b) *Efective date.* The effective date of the UIC program for Indian lands in North Dakota is (30 days after publication of the final rule in the **Federal Register**).

26. Subpart KK—Ohio is proposed to be amended by revising the introductory text of § 147.1800 and by adding a new § 147.1805 to read as follows:

§ 147.1800 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Ohio, except for those on Indian lands, is the program administered by the Ohio Department of Natural Resources, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

§ 147.1805 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Ohio is adminstered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Ohio is (30 days after publication of the final rule in the **Federal Register**).

27. Subpart LL—Oklahoma is proposed to be amended by revising §§ 147.1850 introductory text, 147.1851 introductory text, and § 147.1852 to read as follows:

§ 147.1850 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Oklahoma, except those on Indian lands, is the program administered by the Oklahoma State Department of Health, approved by EPA pursuant to SDWA section 1422.

* * * * *

§ 147.1851 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Oklahoma, including the lands of the Five Civilized Tribes, but not including those on other Indian lands, is the program administered by the Oklahoma Corporation Commission approved by EPA pursuant to SDWA section 1425.

* * * * *

§ 147.1852 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the lands of the Five Civilized Tribes, is administered by EPA. The UIC program for Class II wells on the Osage Mineral Reserve consists of the requirements set forth in Subpart GGG of this part. The UIC program for all other wells on Indian lands consists of the requirements set forth in Subpart III of this part. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for UIC program for Class II wells on the Osage Mineral Reserve is December 30, 1984. The effective date for the UIC program for all other wells on Indian lands is (30 days after publication of the final rule in the **Federal Register**).

28. Subpart MM—Oregon is proposed to be amended by revising the introductory text of § 147.1900 and by adding a new § 147.1901 to read as follows:

§ 147.1900 State-administered program—Class I, II, III, IV and V wells.

The UIC program for Class I, II, III, IV, and V wells in Oregon, except those on Indian lands, is administered by the Oregon Department of Environmental Quality, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.1901 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Oregon is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Oregon is (30 days after publication of the final rule in the **Federal Register**).

29. In Subpart NN—Pennsylvania, § 147.1951 is proposed to be revised to read as follow:

§ 147.1951 EPA-administered program.

(a) *Contents.* The UIC program for the State of Pennsylvania, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program for the rest of Pennsylvania is June 25, 1984.

30. Subpart OO—Rhode Island is proposed to be amended by revising the introductory text of § 147.2000 and by adding a new § 147.2001 to read as follows:

§ 147.2000 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV and V wells in Rhode Island, except those on Indian lands, is the program administered by the Rhode Island Department of Environmental Management, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.2001 EPA-administered program—Indian lands.

(c) *Contents.* The UIC program for all classes of wells on Indian lands in Rhode Island is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Rhode Island is (30 days after publication of the final rule in the **Federal Register**).

31. Subpart PP—South Carolina is proposed to be amended by revising the introductory text of § 147.2050 and by adding a new § 147.2051 to read as follows:

§ 147.2050 State-administered program—Class I, II, III, IV and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of South Carolina, except for those on Indian lands, is the program administered by the South Carolina Department of Health and Environmental Control, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.2051 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in South Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in South Carolina is (30 days after publication of the final rule in the **Federal Register**).

32. In Subpart RR—Tennessee, § 147.2151 is proposed to be revised to read as follows:

§ 147.2151 EPA-Administered program.

(a) *Contents.* The UIC program for the State of Tennessee, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additonal requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* Effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program for the rest of Tennessee is June 25, 1984.

33. Subpart SS—Texas is proposed to be amended by revising § 147.2200 introductory text and § 147.2201 introductory text, and by adding a new § 147.2205 to read as follows:

§ 147.2200 State-administered program—Class I, III, IV and V wells.

Requirements for Class I, III, IV, and V wells. The UIC program for Class I, III, IV and V wells in the State of Texas, except for those wells on Indian lands, is the State-administered program approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.2201 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Texas, except for those wells on Indian lands, is the program administered by the Railroad Commission of Texas, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

§ 147.2205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Texas is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the Indian lands program for the State of Texas is (30 days after publication of the final rule in the **Federal Register**).

34. Subpart TT—Utah is proposed to be amended by revising § 147.2250 introductory text, and § 147.2251 introductory text, and by adding a new § 147.2253 to read as follows:

§ 147.2250 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV and V wells in the State of Utah, except those on Indian lands, are administered by the Utah Department of Health, Division of Environmental Health, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.2251 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Utah, except those on Indian lands, is the program administered by the Utah Department of Natural Resources, Division of Oil, Gas, and Mining, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

§ 147.2253 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Utah is administered by EPA. The program for wells on the lands of the Navajo and Ute Mountain Ute consists of the requirements set forth at Subpart HHH of this part. The program for all other wells on Indian lands consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the program of the Navajo and Ute Mountain Ute is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program on other Indian lands is (30 days after publication of the final rule in the **Federal Register**).

35. Subpart UU—Vermont is proposed to be amended by revising the introductory text § 147.2300 and by adding a new § 147.2303 to read as follows:

§147.2300 State-administered program.

The UIC program for Class I, II, III, IV, and V wells for the State of Vermont, except for those on Indian lands, is the program administered by the Vermont Department of Water Resources and Environmental Engineering approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§147.2303 EPA-Administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in Vermont is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Vermont is (30 days after publication of the final rule in the **Federal Register.**

36. In Subpart VV—Virginia, § 147.2351 is proposed to be revised to read as follows:

§147.2351 EPA-administered program.

(a) *Contents.* The UIC program for the State of Virginia, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program for the remainder of Virginia is June 25, 1984.

37. Subpart WW—Washington is proposed to be amended by adding new §§ 147.2403 and 147.2404 as follows:

§147.2403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Washington is administered by EPA. This program, for all Indian lands except those of the Colville Tribe, consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for Indian lands in Washington is (30 days after publication of the final rule in the **Federal Register**).

§147.2404 EPA-administered program—Colville Reservation.

The UIC program for the Colville Indian Reservation consists of a prohibition of all Class I, II, III and IV injection wells and of a program administered by EPA for Class V wells. This program consists of the UIC program requirements of 40 CFR Part 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements. The prohibition on Class I–IV wells is effective (30 days after publication of the final rule in the **Federal Register**). No owner or operator shall construct, operate, maintain, convert, or conduct any other injection activity thereafter using Class I–IV wells.

(b) Owners and operators of Class I, II, III, or IV wells in existance on the effective date of the program shall cease injection immediately. Within 60 days of the effective date of the program the owner or operator shall submit, for the Director's approval, a plan and schedule for plugging and abandoning the well. The owner or operator shall plug and abandon the well according to the approved plan and schedule.

38. Subpart XX—West Virginia is proposed to be amended by adding a new § 147.2453 as follows:

§147.2453 EPA-administered program.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in West Virginia is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in

West Virginia is (30 days after publication of the final rule in the **Federal Register**).

39. Subpart ZZ—Wyoming is proposed to be amended by revising the introductory text of sections 147.2550 and 147.2551 and by adding a new § 147.2553 and § 147.2554 to read as follows:

§ 147.2550 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Wyoming, except those on Indian lands, is the program administered by the Wyoming Department of Environmental Quality approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

§ 147.2551 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Wyoming, except those on Indian lands, is the program administered by the Wyoming Oil and Gas Conservation Commission, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

§ 147.2553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in Wyoming is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in Wyoming is (30 days after publication of the final rule in the **Federal Register**).

§ 147.2554 Aquifer Exemptions.

In accordance with § 144.7(b) and § 146.4 of this chapter, those portions of aquifers currently being used for injection in connection with Class II (oil and gas) injection operations on the Wind River Reservation, which are described below, are hereby exempted for the purpose of Class II injection activity. This exemption applies only to the aquifers tabulated below, and includes those portions of the aquifers defined on the surface by an outer boundary of those quarter-quarter sections dissected by a line drawn parallel to, but one-quarter mile outside, the field boundary, and is restricted to extend no further than one-quarter mile outside the Reservation boundary. Maps showing the exact boundaries of the fields may be consulted at the EPA's Region 8 Office, and at the EPA Headquarters in Washington, D.C.

Oil or gas field	Associated reservoirs
Circle Ridge	Phosphoria, Tensleep, and Darwin Sandstone.
Lander	Phosphoria.
Maverick Springs	Phosphoria.
East Riverton Dome	Nugget and Frontier.
Steamboat Butte	Nugget, Phosphoria, and Tensleep.
Winkleman Dome	Nugget, Phosphoria and Tensleep.
Sheldon Dome (New Sheldon).	Crow Mountain, Cloverly.
Rolff Lake	Crow Mountain.

40. Subpart AAA—Guam is proposed to be amended by revising the introductory text of § 147.2600 and by adding a new § 147.2601 to read as follows:

§ 147.2600 State-administered program.

The UIC program for Class I, II, III, IV, and V wells in the territory of Guam, except those on Indian lands, is the program administered by the Guam Environmental Protection Agency, approved by EPA pursuant to SDWA section 1422.

* * * * *

§ 147.2601 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in the territory of Guam is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in the territory of Guam is (30 days after publication of the final rule in the **Federal Register**).

41. Subpart BBB—Puerto Rico is proposed to be amended by revising § 147.2651 to read as follows:

§ 147.2651 EPA-administered program.

(a) *Contents.* The UIC program for Puerto Rico, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective date.* The effective date of the UIC program for non-Indian lands in Puerto Rico is December 30, 1984. The effective date of the UIC program on Indian lands in Puerto Rico is (30 days after publication of the final rule in the **Federal Register**).

42. Subpart CCC—Virgin Islands is proposed to be amended by revising § 147.2701 to read as follows:

§ 147.2701 EPA-administered program.

(a) Contents. The UIC program for the Virgin Islands, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective date.* The effective date of the UIC program for non-Indian lands in the Virgin Islands is December 30, 1984. The effective date for Indian lands in the Virgin Islands is (30 days after publication of the final rule in the **Federal Register**).

43. Subpart DDD—American Samoa is proposed to be amended by revising § 147.2751 to read as follows:

§ 147.2751 EPA-administered program.

(a) *Contents.* The UIC program for American Samoa, including Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date for the UIC program on non-Indian lands is June 25, 1984. The effective date of the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**).

44. Subpart EEE—Commonwealth of the Northern Mariana Islands is proposed to be amended by revising § 147.2801 to read as follows:

§ 147.2801 EPA-administered program.

(a) *Contents.* The UIC program for the Commonwealth of the Northern Mariana Islands, including Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date of the UIC program for the non-Indian lands in the Commonwealth of the Northern Mariana Islands is June 25, 1984. The effective date for Indian lands is (30 days after publication of the final rule in the **Federal Register**).

45. Subpart FFF—Trust Territory of the Pacific Islands is proposed to be amended by revising § 147.2851 to read as follows:

§ 147.2851 EPA-administered program.

(a) *Contents.* The UIC program for the Trust Territory of the Pacific Islands, including Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date of the UIC program for non-Indian lands of the Trust Territory of the Pacific Islands is June 25, 1984. The effective date for the Indian lands is (30 days after publication of the final rule in the **Federal Register**).

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May 11, 1987

Part IV

Environmental Protection Agency

40 CFR Part 147

Underground Injection Control Programs for Certain Indian Lands; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL 3150-2]

Underground Injection Control Programs for Certain Indian Lands

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing federally-administered Underground Injection Control (UIC) programs for the Navajo Indian lands, Ute Mountain Ute Indian lands, and other Indian lands in New Mexico and Oklahoma as part of its mandate to regulate all underground injection activity in the United States. These programs are based on the Federal program, but contain some additions and modifications. Elsewhere in today's **Federal Register**, the Agency is proposing Underground Injection Control programs for all other Indian lands not already covered by an applicable UIC program. Together these actions propose to regulate all injection wells on Indian lands in order to protect underground sources of drinking water. Today's notice does not propose procedures by which Indian Tribes may apply for primary enforcement responsibility. That issue will be addressed later.

DATES: Comments must be submitted on or before (July 10, 1987). Five public hearings will be held:

1. June 17, 1987, 7:00 p.m., Oklahoma City, Oklahoma.
2. June 18, 1987, 7:00 p.m., Tulsa, Oklahoma.
3. June 23, 1987, 7:00 p.m., Farmington, New Mexico.
4. June 24, 1987, 1:00 p.m., Window Rock, Arizona.
5. June 25, 1987, 7:00 p.m., Albuquerque, New Mexico.

ADDRESSES: Comments may be mailed to Judy Long, Comment Clerk, Underground Injection Control Branch, State Programs Division, Office of Drinking Water (WH-550E) EPA, 401 M Street SW., Washington, DC 20460. (202) 382-5594. The record is available for inspection and copying in Room 1143ET at the same address.

The hearings will be held at the following locations:

1. Oklahoma City—Jim Thorpe Office Building, Room 301, 2101 N. Lincoln Boulevard.
2. Tulsa, Oklahoma—State Office Building, Auditorium, 440 South Houston Street.
3. Farmington—Farmington Civic Center, Room C.
4. Window Rock—Navajo Training Center.
5. Albuquerque—Albuquerque Convention Center, Acoma Room.

FOR FURTHER INFORMATION CONTACT: Donald M. Olson, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, EPA. (WH-550E) 401 M Street SW., Washington, DC 20460. (202) 382-5558.

SUPPLEMENTARY INFORMATION:

I. Background

The Safe Drinking Water Act (SDWA) authorizes EPA to regulate underground injection activity on all lands in the United States, including Indian lands. (EPA has adopted the definition of Indian country in 18 U.S.C. 1151, as the definition of Indian lands for the UIC program. It is set forth in full at 40 CFR 144.3). The 1986 Amendments to the SDWA specifically directed EPA to promulgate by March 1987 a Federal UIC program for all Indian lands not already covered by an applicable UIC program.

EPA has promulgated or proposed the "generic" Federal program contained in 40 CFR Parts 124, 144 and 146 for most Indian lands. This is the same program that EPA administers on non-Indian lands in many States.

A few Indian Tribes expressed interest in requirements that differ somewhat from the generic Federal ones, and development of the provisions has advanced sufficiently to propose them today as part of the program for these Indian lands.

The SDWA and its regulations allow flexibility to respond to the unique conditions and needs of Indian Tribes, and EPA policy encourages such accommodation. The SDWA sets forth only very general criteria for establishing UIC programs. The criteria apply equally to Federally-administered and State-administered programs (42 U.S.C. 300h-1(c)). In prescribing a program for Indian lands, as for any UIC program, the Administrator must:

(1) Effectively prevent endangerment of drinking water sources;

(2) Prohibit unauthorized injection;

(3) Require the applicant for a permit to prove it will not endanger underground drinking water sources and not authorize by rule any injection which endangers underground drinking water sources;

(4) Include in the program provisions for inspection, monitoring, recordkeeping, and reporting;

(5) Apply the program to Federal agencies and to all persons; and

(6) Not interfere with or impede oil or natural gas production unless essential to assure protection of underground sources of drinking water.

The SDWA encourage "consideration of varying geologic, hydrologic, or historical conditions in different States and in different areas within a State."

The regulations containing criteria for State programs (at 40 CFR Part 145) allow provisions in State programs to differ from the generic Federal provisions, so long as they are at least as stringent. The 1986 amendments to the SDWA authorize the Administrator to treat Indian Tribes as States (section 1451 SDWA). EPA believes that the Administrator has authority to enact UIC programs for Indian lands which differ from, but are not less stringent than the Federal program.

The EPA Indian Policy, issued November 8, 1984, committed the Agency to deal with Indian Tribes on a government-to-government basis, and to assist them in developing the capability to manage their own environmental programs. Application of this policy to the UIC program has been discussed in preambles to several regulations and partially codified at 40 CFR 144.2.

II. Development of this proposal

In **Federal Register** notices on September 2, 1983 and May 11, 1984, EPA discussed four options for developing Federally-administered programs on Indian lands. There were:

(1) EPA would implement a program consisting of the current Underground Injection Control (UIC) minimum requirements (40 CFR Parts 124, 144, and 146), with perhaps a few requirements tailored to the specific jurisdiction;

(2) EPA would implement a program essentially consisting of the requirements currently in place in the State-administered program approved by EPA for the State in which the Indian lands were located (as long as such requirements did not conflict with or go beyond EPA authority under the SDWA or other Federal law);

(3) EPA would implement a program consisting of a combination of requirements from the Federal UIC regulations and requirements of the approved program of the State in which the Indian lands are located; or

(4) EPA would implement a program different from both the Federal UIC regulations and the approved State program, containing requirements that responded to concerns and wishes of the affected tribal government. If the program to be implemented on Indian lands were substantially different from both the approved State program and

the Federal regulations, a supplemental proposal would be published.

In the fall of 1983, EPA conducted public hearings on these four options. Industry responded in favor of option 2 as did the Bureau of Indian Affairs (BIA) for the Navajo Nation. There was particular concern about the regulatory problems which might arise if differing State and Federal regulations were applied in areas of mixed Indian and non-Indian ownership of small parcels of land (referred to as "checkerboard"). The Navajo Nation requested a single program for the entire reservation dealing with its special needs, including some requirements from the New Mexico State program. The Ute Mountain Utes requested a program for Class II injection wells similar to the Navajos because of an enhanced recovery project spanning the two reservations. Several of the Oklahoma Tribes were mainly concerned about being informed about permit issuance and other actions affecting their lands. Today's proposal incorporates requirements from both the Federal program and the New Mexico and Oklahoma programs with a few additional provisions responding to the concerns of the Indians.

The Agency conducted meetings in the fall of 1985 with affected tribes, the Bureau of Land Management (BLM), the Bureau of Indian Affairs (BIA), and the States of New Mexico and Oklahoma to solicit preliminary comments. EPA held a followup meeting with the Navajo during the summer of 1986.

III. Scope

Today's proposal consists of two tailored programs. One covers all wells on the Navajo Indian lands, Class II wells on the Ute Mountain Ute Indian lands in Colorado, and all wells on Ute Mountain Ute lands in Utah and all wells on the Ute Mountain Ute and other Indian lands in New Mexico. The lands of the Navajo extend into the States of New Mexico, Utah, and Arizona, areas covered by EPA Regions VI, VIII and IX. The lastest inventory of wells on Navajo Indian lands indicates there is a total of 604 Class II wells (374 in Utah, 226 in New Mexico, and four in Arizona), 90 Class III wells (all in New Mexico) and two Class V wells (both in New Mexico).

The Ute Mountain Ute lands extend into the States of New Mexico, Colorado and Utah, EPA Regions VI and VIII. There are 15 Class II wells on Ute Mountain Ute lands (12 in New Mexico and three in Colorado). EPA is currently administering the generic Federal program for non-Class II wells on the lands of the Ute Mountain Ute in Colorado.

The remainder of the existing injection wells in New Mexico on Indian lands are three Class II wells on the Jicarilla Indian Reservation and three Class V wells on the Laguna Indian Reservation.

The second tailored program applies to all classes of wells on all Indian lands in Oklahoma, except for Class II wells on the Osage Mineral Reserve in Osage County and Class II wells on the lands of the Five Civilized Tribes (Choctaw, Cherokee, and Chickasaw, Creek and Seminole). The Class II program for the Osage Mineral Reserve was promulgated on November 15, 1984, and may be found at 40 CFR 147 Subpart GGG. The Class II program on the lands of the Five Civilized Tribes was promulgated on December 2, 1981, as part of the State-administered program. (40 CFR 147, Subpart LL).

The lastest inventory indicates that there are one Class I well and 194 Class II wells on the Indian lands in Oklahoma covered by this proposal. The wells are located on lands of 13 of the 33 tribes.

IV. Request for Comment

Today, EPA seeks comments not only on those provisions which deviate from the generic Federal program but also on whether other requirements might better suit the needs of the Indian tribes and reflect the local geological, hydrologic and historic conditions on these lands. Please note that EPA is requesting comment only on the applicability of the Federal generic provisions to these Indian lands. Discussion of the Federal generic provisions themselves are no longer timely.

V. Program Contents—Provisions of the Navajo, Ute Mountain Ute, and New Mexico Indian Lands Program

The program for the Navajo, Ute Mountain Ute, and New Mexico Indian lands incorporates the Federal UIC program codified at 40 CFR Parts 124, 144 and 146 with certain additional requirements described below. Many of these additions fall within the discretionary authority contained in the generic Federal regulations and thus do not expand the scope of generic regulations. Some additions are requirements that have been included in other Direct Implementation programs or in EPA-approved State programs.

A. Public Notice of Permit Actions (§ 147.3002)

This proposal would require actual, individual notification of an owner or operator's intent to apply for a UIC permit to landowners, tenants and lease operators within one-half mile of the well and to the affected Tribal Government. A permit applicant would be required to give the notice and would submit a detailed description of the way he gave notice with his application. In addition, EPA is proposing to provide to affected Tribal governments all notices given to "affected States" under § 124.10(c) of this chapter.

The generic Federal program does not require notice of intent to apply for a permit, but the State of New Mexico and other State and Federally-administered programs include similar notice provisions because they have been found to be effective in soliciting public comment in rural areas. EPA is contemplating incorporating the additional notice to Tribal Governments into the generic regulations because it is in keeping with the 1986 Amendments (new § 1451 of the SDWA) and will help foster meaningful participation by the Tribes.

B. Aquifer Exemptions (§ 147.3003(a))

The SDWA protects all underground sources of drinking water, whether or not specifically designated as such. The regulations define "underground source of drinking water" very broadly as: an aquifer which supplies or has sufficient capacity to supply a public water system; and either currently supplies drinking water for human consumption, or contains less than 10,000 mg/1 TDS; and is not an exempted aquifer. Under existing regulations, EPA may exempt from the UIC program aquifers which have the capacity to supply public water systems and contain less than 10,000 mg/1 TDS if they do not now and could not in the future serve as a source for a public water supply for one of the reasons recognized in the regulations (40 CFR 146.4). Owners and operators of injection wells may inject into an exempted aquifer.

EPA has information that some Class II wells, particularly enhanced recovery wells, are currently injecting into aquifers with less than 10,000 TDS water. Most of these aquifers will probably qualify for exempted aquifer status. However, unless the Agency designates them as exempted aquifers, injection into them becomes illegal on the day the UIC program takes effect. It is EPA's intent to exempt the appropriate portions of some aquifers at the time of promulgation of the UIC program so that appropriate injection operations may continue without disruption.

As in any UIC program, aquifer exemptions may be obtained in one of the following ways:

(1) The Agency is proposing exemptions for portions of some aquifers as part of this rulemaking;

(2) Operators may request additional exemptions during the comment period on this proposal which will be considered under the criteria contained in 40 CFR 146.4;

(3) New wells may necessitate additional aquifer exemptions appropriate after program promulgation. Owners and operators may apply for them using established Agency procedures.

The proposed exemptions are limited to the injection formation only and for Class II purposes only. Some of the aquifer exemptions that EPA is proposing are at a great depth, an average of 5,400 feet. The aquifers in question serve as the injection zone for enhanced recovery wells, and by their nature, are hydrocarbon producing zones. To the best of our knowledge, the formations are not now used as sources of drinking water, and because of their hydrocarbon content are not expected to be used for these purposes in the future.

EPA is proposing to exempt qualified portions of aquifers within one-quarter mile of known active Class II wells. If a well owner or operator wishes EPA to exempt an entire field, he must submit a justification for such an exemption during the comment period on this proposal. Alternatively, he may submit such data in the future when a permit application is submitted for new wells in that field. A complete listing of the exemptions and their locations is available for review at the EPA Regional offices in Denver, Dallas, and San Francisco; at the Bureau of Land Management Offices in Farmington and Albuquerque, New Mexico; and at the Navajo Division of Water Resources Office in Window Rock, Arizona. Owners and operators are encouraged to check the maps and lists to be sure that all of their existing wells are shown. EPA requests any information indicating that portions of these aquifers do not qualify for exemptions or that the formations listed are not USDWs, and thus, do not need exemptions.

C. Aquifer Cleanup (§ 147.3003(b) and § 147.3011)

The generic Federal program requires owners and operators of Class III wells which are in or under an exempted aquifer to demonstrate that the plugging and abandonment plan will protect underground sources of drinking water (USDWs). The Director of a UIC program must prescribe "aquifer clean-up and monitoring where he deems it necessary and feasible to insure adequate protection of USDWs." (§ 146.10(d)). This means that the mined area must be cleaned up after cessation of mining to the point that contaminants from mining operations will not endanger the surrounding USDWs.

Under today's proposed program, EPA would require clean-up and monitoring for every Class III project located in or under an exempted aquifer of 5,000 milligrams per liter (mg/1) total dissolved solids (TDS) or less as needed to protect surrounding USDWs. The Director would continue to be able to use the discretion granted in § 146.10(d) in deciding whether to require clean-up and monitoring for Class III projects in or under aquifers of 5,000—10,000 mg/1 TDS.

The scarce water in this arid region is very valuable and justifies this higher level of protection, which has been specifically requested by the affected Tribes. All of the existing Class III projects covered by the proposed program are located on Indian lands in New Mexico and New Mexico is the most likely location for new Class III wells. The New Mexico State UIC program requires levels of protection equivalent to those in the proposed program. The feasibility of such clean-up has recently been demonstrated for the types of mining and geology likely to be covered by the program in projects in New Mexico and Texas.

EPA would prepare guidance on implementing this provision and solicits comments on both types of contaminants requiring cleanup and the extent of cleanup. EPA intends that pre-injection formation water quality would be measured by the applicant and used as the goal for the clean-up. The level of clean-up for each contaminant would be set in the permit, based as close to pre-injection formation water quality measurements as is feasible. The following list of contaminants, from New Mexico's program would be measured as appropriate in specific cases.

Arsenic (As)
Barium (Ba)
Cadmium (Cd)
Chromium (Cr)
Fluoride (F)
Lead (Pb)
Total Mercury (Hg)
Nitrate (NO_3 as N)
Selenium (Se)
Silver (Ag)
Carbon Tetrachloride
1,2-dichloroethane (EDC)
Nickel (Ni)
Uranium (U)
Radioactivity: Combined Radium-226 and Radium-228
Benzene
Polychlorinated Biphenyls (PCB's)
Toluene
1,1-dichloroethylene (1,1-DCE)
1,1, 2-2-tetrachloroethylene (PCE)
1,1, 2-trichloroethylene (TCE)
Chloride (Cl)
Copper (Cu)
Iron (Fe)
Manganese (Mn)
Phenols
Sulfate (SO_4)
Total Dissolved Solids (TDS)
Zinc (Zn)
pH
Aluminum (Al)
Boron (B)
Cobalt (Co)
Molybdenum (Mo)

If a permittee finds, after reasonable attempts, that an approved clean-up plan has proved to be infeasible to achieve in practice, he could document for the Director the attempt and failure to achieve contaminant levels set in the permit standards and request a modification of the clean-up standards through the procedures in 40 CFR 144.39 and 124.5.

In terms of procedures, EPA intends that the permittee would be required to submit a proposed schedule for clean-up to the Director for his approval at the time the permittee requests permission to plug and abandon the well (see § 146.34(c)). The owner or operator would continue clean-up and monitoring activity according to the clean-up schedule until notified by the Director that the conditions of his permit had been satisfied. The Director would base his decision on reports submitted by the operator and the results of water quality analyses. The permittee would have to notify the Director at least two weeks in advance of sampling dates and provide the opportunity for splitting samples with the Director.

After three consecutive sample sets (a "sample set" is one sample from each well designated in the permit) taken at a minimum of 30-day intervals, show that all constituents are at concentrations equal to or less than that required by the permit, the Director would allow the permittee to cease clean-up efforts. The permittee would be required to file with the Director a written report of the results of the analyses and a summary of clean-up efforts. After filing the report, sampling for all constituents listed in the permit would again be conducted at 30-day intervals for a minimum of three more sample sets and reported to the Director. (This makes a total of six sample sets). The Director

would determine within 120 days of receiving the sixth sample analysis whether or not clean-up has been achieved. Upon acknowledgement in writing by the Director of final clean-up, the permittee may cease all monitoring and clean-up activities in the affected area. EPA solicits comment on whether these procedures are appropriate.

D. Duration of Rule Authorization for Class I and III Wells. (§ 147.3004, 3007(a))

EPA is proposing that owners and operators of existing Class I and III wells submit permit applications no later than 90 days after the program becomes effective.

The generic Federal program contains a one-year deadline. The longer period was established for administrative reasons, as it was clearly impossible to process all of the Class I and III permits in direct implementation programs in a shorter time. However, there are no existing Class I wells covered by this proposed program, and only three Class III projects. In addition, owners and operators have already gathered most of the information for related submissions to State agencies. Therefore, the shorter period for permit application should not be a burden to owners and operators or to EPA.

E. Additional Requirements for Wells Injecting Radioactive Waste (§ 147.3005 and § 147.3016)

Under EPA's Federal program, wells which inject radioactive waste below the lower-most USDW in an area are Class V wells and we not currently subject to specific technical standards (40 CFR 146.51). The proposed provisions would continue to classify wells which inject radioactive waste as Class V, but would require them to comply with all requirements pertaining to Class I hazardous waste wells (under the authority of § 144.25(a)(3)). Among other things, this proposal would require owners and operators to obtain a permit before constructing a radioactive waste disposal well and to comply with Class I construction and operating standards and requirements. This addition is in accordance with Tribal desire for increased stringency in this area, and will maintain consistency with surrounding State UIC programs.

The definition of "radioactive waste" contained in 40 CFR 144.3 is unchanged, and refers to any waste which contains radioactive materials in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2. However, wells which inject high level and transuranic waste and spent nuclear fuel covered by 40 CFR Part 191 are excluded from these additional requirements. This proposed regulation in no way modifies or affects the application of 40 CFR 191 or otherwise affects the relationship of the SDWA and the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 *et seq.*) as they are being litigated in *National Resources Defense Council* v. *U.S. EPA*, No. 85–1915 and Cons. Case Nos. 86–1096, 86–1097, 86–1098 (1st Cir.). That case is still pending.

EPA is not aware of any existing wells injecting radioactive wastes beneath the Indian lands covered by this proposal. Any future radioactive waste disposal wells on Indian lands are expected to be associated with uranium mine sites.

F. Maximum Injection Pressure Limit for Rule-Authorized Class II Salt Water Disposal Wells (§ 147.3006(a))

Under the generic Federal regulations at 40 CFR 144.28(f)(3)(ii) and 40 CFR 146.23(a), the owner or operator is generally directed not to exceed whatever maximum pressure at the wellhead would assure that injection will not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDW.

EPA is proposing for this program a specific maximum surface injection pressure of 0.2 pounds per square inch (psi) for each foot of depth to the top of the injection zone for rule-authorized Class II salt water disposal wells on these Indian lands. This limit has been used for several years by the State of New Mexico and is considered by EPA to be a very conservative formula to prevent fracturing of the injection zone. For Class II wells in Utah, the maximum injection pressure allowed under the State-administered program is determined by the following equation: Maximum injection pressure = (.733 − .433 × specific gravity of injection fluid) × depth of injection. The equation proposed for use on Indian lands would require lower maximum injection pressures than the Utah program except where the TDS of the injected fluids exceed approximately 300,000 mg/l.This should not have a significant impact on operators. Use of the proposed formula will assure that maximum injection pressures do not exceed those currently in effect in the area, and because there is no necessity for calculation of fluid density or tubing frictional loss, it is easily administered by the regulatory agency and easily understood by the regulated community. Higher injection pressures may be granted under a permit, provided that the conditions of § 144.52(a)(3) are met.

G. Maximum Injection Pressure for Enhanced Recovery and Hydrocarbon Storage Wells (§ 147.3006(b))

For owners or operators of enhanced recovery and hydrocarbon storage wells, EPA proposed to require submission of formation-specific maximum injectin pressure values on a field or project basis as it has done for other Direct Implementation programs (see for example, § 147.1353 (Montana) or § 147.1654 (New York)). The Agency would then establish appropriate limits for formations or units based on this and other data. The establishment of such "field rules" for maximum injection pressure has been favored by EPA because fracture gradients may vary considerably within relatively small areas and usually cannot be accurately described by a single formula. Operators who wish to inject a higher pressure than those set for the formation and field must demonstrate in writing to the Director that the higher pressure will not initiate new fractures, propagate existing fractures or cause the movement of fluid into a USDW. After an opportunity for a public hearing and public comment, the Director may grant the request for higher pressure.

H. Information to be Considered in Permit Applications (§ 147.3007(b), § 147.3013, and § 147.3015)

The proposal specifies that certain information would have to be submitted with permit applications in addition to that in the minimum Federal requirements listed at 40 CFR 146.14(a) and 146.34(a). These additional requirements, which include information on expected pressure and fluid changes and sampling methodology, are consistent with the program of the State of New Mexico and they allow for a more thorough evaluation of permit applications. A portion of this additional information, required for Class III wells, is a direct result of the proposed aquifer clean-up requirement discussed above.

I. Criteria for Aquifer Exemptions (§ 147.3008)

Several criteria for granting aquifer exemptions under the generic Federal program are set forth in 40 CFR 146.4. Under this proposed Indian lands program an aquifer could not be exempted solely on the grounds that "the total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system." This criterion, contained in § 146.4(c), would not apply for the proposed program, although aquifers

could still be exempted on the other grounds in § 146.4.

In most parts of the country, waters above 3,000 mg/l TDS might not reasonably be expected to supply a public water system. However, in the arid and rural Southwest lands for which this program is proposed such water is used and needed. The higher level of protection is consistent with the New Mexico State program and is desired by the Indian Tribes.

J. Area of Review (§ 147.3009)

The Federal minimum requirements, at 40 CFR 146.6, specify that the Director may establish the area of review around an injection well either by setting a fixed radius, not less than one-quarter mile, or through the use of an appropriate formula to calculate the zone of endangering influence.

EPA is proposing to adopt the area of review requirements currently used in the Utah and New Mexico programs for this Indian land program. For Class II wells, the proposed area of review is a fixed radius of one-half mile. For Class I and III wells, the proposed area of review is a fixed radius of two and one-half miles. Alternatively, the proposal allows an applicant for a Class I or III permit to make either one of two demonstrations. First, in suitable cases, he may present technical information to show that production from the injection zone exceeds injection and results in a net withdrawal from the injection horizon at all times. Second, with the approval of the Director, he may use a mathematical equation, such as the modified form of the Theis equation (set out in 40 CFR 146.6) to calculate a zone of endangering influence. If the applicant chooses to make one of the alternative demonstrations, he should also propose a specific area of review not less than one-quarter mile for the Director's consideration.

It might appear that the minimum one-quarter mile area of review for Class I and III wells affords less protection than the fixed radius of one-half mile for Class II wells. However, the smaller area of review for Class I and III wells will be approved only where both the net volume of injected fluids and the maximum injection pressures anticipated (which together define the zone of endangering influence) is much less than would be allowed under a one-half mile fixed radius. It is desirable to limit the zone of endangering influence because this reduces the land area in which there is potential for movement of fluids through unplugged wells.

The States of New Mexico and Utah use these area of review calculations because they are believed to be suitable to the local geologic and environmental conditions. EPA proposes to adopt them to satisfy the strong public desire to follow the surrounding State programs as closely as possible, and to give additional protection to the groundwater in this arid region.

K. Mechanical Integrity Tests (§ 147.3010)

Consistent with national guidance, all annulus monitoring must be preceded by a pressure test in this proposed program. In a change from the current Federal regulations, radioactive tracer surveys would be used to evaluate the absence of significant leaks under § 146.8(a)(1). In addition, radioactive tracer surveys would be regarded as an acceptable method of determining the absence of significant fluid movement through vertical channels adjacent to the well bore (§ 146.8(a)(2)). For this purpose, the Director must approve the use of the radioactive tracer in each case and it must be used in conjunction with at least one of the other approved methods. (For example, a temperature or noise log.) Radioactive tracer surveys are accepted by the industry. They are faster than other methods, and can be as reliable, when properly conducted. EPA intends to add radioactive tracer surveys to the list of acceptable methods under paragraph (c) and to the paragraph (b) list for all Federal programs, and has already approved their use for many State programs.

Finally, EPA is proposing that the operator submit a detailed description of whatever testing methodology he chooses to the Director for approval prior to conducting any test.

L. Construction Requirements (§ 147.3012, 147.3014)

Section 146.12(b) of the generic regulations requires all Class I wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. As in other direct implementation programs, EPA is implementing the broad directive of the regulation by proposing specific cementing requirements appropriate to the local geologic conditions. This program proposes (in § 147.3012) that the entire casing-borehole annulus of Class I wells be cemented from bottom to surface, as the New Mexico State UIC program requires.

Class III operators will also have to provide a description of the radiological characteristics of the formation fluids, a necessary part of the plugging and abandonment plan that includes aquifer cleanup. Monitoring wells may be required by the Director (under authority of § 144.52(a)(9)) for USDW's below the injection zone of Class III projects, in addition to those above the injection zone already required by EPA Federal regulations, if these USDWs may be affected by mining operations (§ 147.3014).

VI. Program Contents—Provisions of the Program for Lands of Certain Oklahoma Indians

A. Introduction

EPA is today also proposing a tailored UIC program covering lands of most Oklahoma Indian Tribes. Currently, the State of Oklahoma administers the approved UIC program for non-Indian lands and for Class II wells on the lands of the Five Civilized Tribes. 40 CFR § 147.1850–147.1851 and 46 FR 58489 (Dec. 2, 1981). EPA administers the UIC program for Class II wells on the Osage Mineral Reserves. 40 CFR § 147.1852. Today's proposal would provide for an EPA-administered program for all other Indian lands in Oklahoma including non-Class II wells on the lands of the Five Civilized Tribes and the Osage Mineral Reserve.

There are at least 30 tribes in Oklahoma and currently over 200 wells not regulated under a UIC program on the lands of 13 tribes. Some well owners and operators have initially expressed interest in having a UIC program for these Indian lands which incorporates significant substantive requirements similar to those in the State of Oklahoma's program. This approach would minimize any disruption from having regulations which are significantly different from the State's for the small percentage of wells interspersed among these Indian lands. Several Indian tribes are also concerned that the program on their land not be substantively less stringent than the Oklahoma State program.

This proposal is the culmination of a previous notice and comment period, a hearing held in September 1983, and meetings with the Bureau of Indian Affairs, Bureau of Land Management and representatives of several tribes held in the summer of 1985. After the 1983 notice, discussed above, two representatives of the industry made comments while Indian tribes provided four written comments and one oral comment. The two industrial commenters wanted a program as near as possible to the existing State program in adjacent jurisdictions. The Comanche Tribe requested a program more stringent than minimum requirements. The Sac and Fox Tribe requested a program with provisions tailored to their

needs, but also requested that the provisions not cause an undue burden on operators who also had wells in other jurisdictions. The Sac and Fox Tribe and the Comanche Tribe specifically requested that the tribal government receive notification of permit applications and action on permits. These provisions have been included in this proposal. The Otoe-Missouri Tribe reserved comments until Federal Register publication of this proposal.

Like the proposed program for the lands of the Navajo, Ute Mountain Ute, and New Mexico Tribes, this proposal for Indian lands in Oklahoma, uses the generic Federal standards (40 CFR 124, 144 and 146) as a base and adds a few provisions which are similar to the State program. The technical provisions proposed here reflect current practice in Oklahoma and respond to some of the initial comments received by EPA.

The scope and rationale for those proposed requirements which add to the generic Federal program are discussed below. However, EPA seeks comments not only on those provisions which deviate from the generic Federal program but also on whether other tailored requirements might also better suit the needs of the Indian tribes or better reflect the local geological, hydrologic and historic conditions on these lands.

B. Notice (§ 147.3101)

Under this proposal, owners and operators and the Director of the program would have public notice responsibilities beyond those in 40 CFR 124.10. This proposal requires an applicant to give notice of an intent to apply for a permit to landowners, tenants and the appropriate tribal government and, for Class II wells, to the operator of a producing lease within one-half mile of the proposed well. Evidence of this prior notice must be part of the application to the EPA. Under this proposal, EPA would also provide additional notice through newspaper publication and radio broadcast. These provisions are similar to the existing State program. This additional notice has been found very helpful in encouraging public participation in rural sparsely populated areas and should help foster meaningful participation by Indian tribes.

C. Plugging and abandonment (§ 147.3102, § 147.3104, § 147.3105 and § 147.3108)

EPA proposes to adopt the Oklahoma approach for plugging and abandonment and associated reporting. The generic Federal standards do not specify detailed plugging requirements, but set forth the basic principle that plugging shall prevent movement of fluids either into or between underground sources of drinking water (40 CFR 146.10). However, the Class II wells in Oklahoma all have similar construction and are completed into a few similarly characterized strata, and EPA believes it is expedient to prescribe detailed plugging requirements in the regulations. This is consistent with the State program and the EPA-regulated program in Osage county, thereby maintaining consistency within Oklahoma. The similarity of the wells will allow EPA to set financial responsibility requirements without detailed plugging plans. The abbreviated individual plugging and abandonment plans would not be required of Class II operators until a notice of abandonment is given to the EPA. The notice of abandonment is due 45 days before planned abandonment.

The setting of cement plugs is detailed in this proposal. Cement plugs are required to seal and isolate the injection zone and the lowermost USDW. The space between the cement plugs must be filled with mud, and a cement plug is required at the surface. The cement plugs so placed will prevent any movement of fluid into or between USDW's. The plugging requirements will be made a permit condition in any permit. Finally, the 45-day notice of abandonment should be sufficient for EPA review and evaluation because the detailed plugging specifications in the regulations restrict the amount of variation in the types of plans EPA will review.

D. Fluid seals (§ 147.3103)

The EPA is proposing that fluid seals not be allowed as an alternative to packers for Class I wells. This prohibition is already a requirement in the Oklahoma State program and is more stringent than the minimum Federal standards. Currently, there is only one Class I well on Indian lands in Oklahoma.

E. Mechanical Integrity Tests (§ 147.3107)

Under this proposal, any monitoring of annulus pressure pursuant to § 146.8(b)(1) must be preceeded by a pressure test. A positive guage pressure must be maintained upon an annulus filled with liquid during such annulus pressure monitoring. Experience in Oklahoma and elsewhere shows that unless a positive pressure is continuously maintained on the annulus, the continued integrity of the well cannot be assumed from monitoring. Both initial pressure test and continued positive gauge pressure are current Agency guidance.

In addition, EPA is proposing that any pressure test conducted pursuant to § 146.8(b)(2) be performed with a pressure on the casing/annulus tubing of at least 200 pounds per square inch (psi) unless otherwise specified by the Director. When such tests are conducted during well operation, EPA proposes that a differential between the injection and annulus pressure of at least 100 psi be maintained throughout the tubing length.

For monitoring of the relationship of injection pressure and injection flow rate in enhanced recovery wells pursuant to § 146.8(b)(3), EPA also proposes that the monitoring must be preceeded by a pressure test conducted not more than 90 days prior to commencement of the monitoring. A pressure test prior to monitoring for the flowrate-volume relationship is consistent with current Agency guidance and with practice in the Osage UIC program.

Under this proposal, radioactive tracer surveys would be an approved test to evaluate the absence of significant leaks under § 146.8(a)(1). Radioactive tracer surveys are also effective in determining the absence of significant fluid movement through vertical channels adjacent to the well bore (§ 146.8(a)(2)) in certain circumstances. Accordingly, this proposal would allow the Director to approve the use of the radioactive tracer in conjunction with at least one of the other approved methods. Tracer surveys are run during operation of the well, and provide reliable means of determining mechanical integrity under actual operating conditions. EPA intends to add them to the list of acceptable methods under paragraph § 146.8(c) and to the paragraph § 146.8(b) list for all Federal programs in a future proposal.

Finally, for existing Class I wells, EPA is proposing a requirement that a test demonstrating mechanical integrity must have been run within 90 days of the date of required application for a permit. EPA believes that a test should be run as close to application as possible. The operator will be required to give the Director at least seven days prior notice of the test so that an observer can be present. The seven days is less than the period currently in the Federal minimum standards because there is only one existing Class I well.

Office of Management and Budget Review

Under Executive Order 12291, EPA must judge whether a regulation is

"major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, nor will it have a significant effect on competition, costs, or prices. For the most part this proposal would extend to a relatively small number of wells the Federal regulations already judged not to be major even when applied to all injection wells in the country.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

The original proposal for the generic Federal program concluded that the Federal program would not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 605(b)). The extension of a program basically consisting of the Federal requirements to a limited number of owners and operators, of whom only some are "small entities," will not change the original assessment.

As required by the Paperwork Reduction Act, a request for approval of the information collection provisions contained in this rule will be submitted to OMB as a part of a comprehensive ICR package in the near future. The submission to OMB will be announced in the **Federal Register** and interested parties will have an opportunity to comment at that time. Comments will be discussed in the preamble to the final UIC Indian land regulations.

List of Subjects in 40 CFR Part 147

Indian lands, Underground injection.

Dated: April 24, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 147 is proposed to be revised to read as follows:

Authority: Safe Drinking Water Act (42 U.S.C. 300h) as amended, and the Resource Conservation and Recovery Act as amended, (42 U.S.C. 6901 *et seq.*) unless otherwise noted.

2. Part 147 is proposed to be amended by adding a new Subpart HHH to read as follows:

Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes

Sec.

Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes

§ 147.3000 EPA-administered program.

(a) *Contents.* This UIC program for the Indian lands of the Navajo, Ute Mountain Ute (all classes of wells in New Mexico and Utah and Class II wells only in Colorado), and other Indian Tribes in New Mexico is administered by EPA. (The term "Indian lands" is defined at 40 CFR 144.3.) The Navajo Indian lands are in the States of Arizona, New Mexico and Utah; and the Ute Mountain Ute lands are in Colorado, New Mexico and Utah. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. The additions and modifications of this subpart apply only to the Indian lands described above. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on these lands is June 10, 1987.

§ 147.3001 Definition.

Area of Review. For the purposes of this subpart, area of review means the area surrounding an injection well or project area described according to the criteria set forth in § 147.3009 of this subpart.

§ 147.3002 Public notice of permit actions.

An applicant shall give public notice of his intention to apply for a permit as follows:

(a) Prior to submitting an application to the Director, the applicant shall give notice to each landowner, tenant and operator of a producing lease within one-half mile of the well location and to the affected Tribal Government. The notice shall include:

(1) Name and address of applicant;

(2) A brief description of the planned injection activities including well location, name and depth of the injection zone, maximum injection pressure and volume, and source and description of the fluid to be injected;

(3) Name, address, and phone number of the EPA contact person;

(4) A statement that opportunity to comment will be announced to the public after EPA prepares a draft permit.

(b) In addition to the requirements of 144.31(e), a permit applicant shall submit a description of the way the notice was given and the names and addresses of those to whom it was given.

(c) Upon written request and supporting documentation, the Director may waive the requirement in paragraph (a) of this section to give individual notice of intent to apply for a permit where it would be impractical. However, notice to the affected Tribal government shall not be waived.

(d) The Director shall provide to the affected Tribal government all notices given to State governments under § 124.10(c) of this chapter.

§ 147.3003 Aquifer exemptions.

(a) *Aquifer exemptions in connection with Class II wells.* In accordance with § 144.7(b) and § 146.4 of this chapter, the portions of authorized injection zones into which existing Class II wells are currently injecting which are described in the Record of Exempted Aquifers in the Administrative EPA Regional Offices 6, 8, and 9 are hereby exempted. The exempted aquifers are defined by a one-quarter mile radius from the existing injection well. The exemption includes the intended injection zone only and is solely for the purpose of Class II injection.

(b) *Class III wells.* In addition to the requirements of § 144.7(c)(1) of this chapter, an appliant for a permit which necessitates an aquifer exemption shall submit a plugging and abandonment plan containing an aquifer cleanup plan, acceptable to the Director, describing the methods or techniques that will be used to meet the standards of § 147.3011. The cleanup plan shall include an analysis of pre-injection water quality for the constituents required by the Director. The Director shall consider the cleanup plan in addition to the other information required for permit

applications under §§ 144.31(e) and 146.34 of this chapter.

§ 147.3004 Duration of rule authorization for existing Class I and III wells.

Notwithstanding § 144.21(a)(3)(i)(B) of this chapter, authorization by rule for existing Class I and III wells will expire 90 days after the effective date of this UIC program unless a complete permit application has been submitted to the Director.

§ 147.3005 Radioactive waste injection wells.

Notwithstanding §§ 144.24 and 146.51(b) of this chapter, owners and operators of wells used to dispose of radioactive waste (as defined in 10 CFR Part 20, Appendix B, Table II, but not including high level and transuranic waste and spent nuclear fuel covered by 40 CFR Part 191) shall comply with all of the requirements pertaining to Class I hazardous waste wells in Parts 124, 144 and 146 of this chapter, as modified and supplemented by this subpart.

§ 147.3006 Injection pressure for existing Class II wells authorized by rule.

(a) *Rule-authorized Class II saltwater disposal wells.* In addition to the requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall, except during well stimulation, use an injection pressure measured at the wellhead that is not greater than the pressure calculated by using the following formula:

$$Pm = 0.2d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch d = depth in feet to the top of the injection zone.

Owners and operators shall comply with this requirement no later than one year after the effective date of this program.

(b) *Rule authorized Class II enhanced recovery and hydrocarbon storage wells.* (1) In addition to the requirements of § 144.28(f)(3)(ii) of this chapter, owners and operators shall use an injection pressure no greater than the pressure established by the Director for the field or formation in which the well is located. The Director shall establish such maximum pressure after notice, opportunity for comment, and opportunity for public hearing according to the provisions of Part 124, Subpart A, of this chapter, and shall inform owners and operators in writing of the applicable maximum pressure or;

(2) An owner or operator may inject at a pressure greater than that specified in paragraph (b)(1) of this section of the field or formation in which he is operating after demonstrating in writing to the satisfaction of the Director that such injection pressure will not violate the requirements of § 144.28(f)(3)(ii) of this chapter. The Director may grant such a request after notice, opportunity for comment and opportunity for a public hearing according to the provisions of Part 124, Subpart A of this chapter.

(3) Prior to the time that the Director establishes rules for maximum injection pressure under paragraph (b)(1) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Director which defines the fracture pressure of the formation in which injection is taking place. A single submission may be made on behalf of two or more operators conducting operations in the same field and formation, if the Director approves. The data shall be submitted to the Director within one year of the effective date of this program.

§ 147.3007 Application for a permit.

(a) Notwithstanding the requirements of § 144.31(c)(1) of this chapter, the owner or operator of an existing Class I or III well shall submit a complete permit application no later than 90 days after the effective date of the program.

(b) The topographic map (or other map if a topographic map is unavailable) required by § 144.31(e)(7) of this chapter, shall extend two miles from Class II wells, and 2½ miles from Class I and III wells. These maps will show all the information listed in § 144.31(e)(7) within ½ mile for Class II wells and 2½ miles for Class I and III wells.

§ 147.3008 Criteria for exempted aquifers.

The aquifer exempted criterion in § 146.4(c) shall not be available for this program.

§ 147.3009 Area of review.

The area of review shall be defined as follows:

(a) *Class II wells.* The area of review for Class II permits and area permits shall be defined by a fixed radius as described in § 146.6(b)(1) and (2) of this chapter except that the radius shall be one-half mile.

(b) *Class I and III wells.* The area of review for Class I and III wells or well fields may be either:

(1) an area defined by a radius two and one-half miles from the well or well field; or

(2) an area one-quarter mile from the well or well field where the well field production at all times exceeds injection to produce a net withdrawal; or

(3) a suitable distance, not less than one-quarter mile, proposed by the owner or operator and approved by the Director based upon a mathematical calculation such as that found in § 146.6(a)(2) of this chapter.

§ 147.3010 Mechanical integrity tests.

(a) The monitoring of annulus pressure listed in § 146.8(b)(1) of this chapter will only be acceptable if preceded by a pressure test, using liquid or gas that clearly demonstrates that mechanical integrity exists at the time of the pressure test.

(b) A radioactive tracer survey may be used to evaluate the absence of significant leaks pursuant to § 146.8(b).

(c) In addition to the methods specified in § 146.8(c)(1) of this chapter, the Director may approve the use of radioactive tracer surveys in appropriate hydrogeologic settings for use in conjunction with at least one of the other alternatives listed in § 146.(c)(1).

(d) In addition to the requirements of § 146.8(b) and (c), and prior to conducting any tests, owners and operators must submit a detailed description of the proposed testing methodology to the Director and receive approval.

§ 147.3011 Plugging and abandonment of Class III wells.

To meet the requirements of paragraph § 146.10(d) of this chapter, owners and operators of Class III projects underlying or in aquifers containing up to 5,000 mg/1 TDS which have been exempted under § 146.4 of this chapter shall:

(a) Include in the required plugging and abandonment plan a plan for aquifer clean-up and monitoring which demonstrates adequate protection of USDWs.

(1) The Director shall include in each such permit for a Class III project the concentrations of contaminants to which aquifers must be cleaned up in order to protect surrounding USDWs.

(2) The concentrations will be based on pre-injection formation water quality and on feasibility of clean-up.

(b) In addition to the information required by § 146.34(c) prior to approval of plugging a Class III well, owners and operators shall submit to the Director for approval, a schedule for the proposed aquifer cleanup.

(c) Cleanup and monitoring shall be continued until the owner or operator certifies that the cleanup has returned all constituents listed in the permit to the concentrations required by the permit, and the Director notifies the

permitee in writing that cleanup activity may be terminated.

§ 147.3012 Construction requirements for Class I wells.

In addition to the cementing requirement of § 146.12(b) of this chapter, owners and operators of Class I wells shall, through circulation, cement all casing to the surface.

§ 147.3013 Information to be considered for Class I wells.

(a) In addition to the information listed in § 146.14(a) of this chapter, the Director shall consider the following prior to issuing any Class I permit:

(1) Expected pressure changes, native fluid displacement, and direction of movement of the injected fluid; and

(2) Methods to be used for sampling, and for measurement and calculation of flow.

(b) In addition to the information listed in § 146.14(b) of this chapter, the Director shall consider any information required under § 146.14(a) of this chapter (as supplemented by this subpart) that has been gathered during construction.

§ 147.3014 Construction requirements for Class III wells.

(a) In addition to the requirements of § 146.32(c)(3) of this chapter, radiological characteristics of the formation fluids shall be provided to the Director.

(b) In addition to the requirements of § 146.32(e) of this chapter, the Director may require monitoring wells to be completed into USDWs below the injection zone if those USDWs may be affected by mining operations.

§ 147.3015 Information to be considered for Class III wells.

(a) In addition to the requirements of § 146.34(a) of this chapter, the following information shall be considered by the Director:

(1) Proposed construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing and coring program.

(2) Depth to the proposed injection zone, and a chemical, physical and radiological analysis of the ground water in the proposed injection zone sufficient to define pre-injection water quality as required for aquifer cleanup by § 147.3011 of this subpart.

(3) An aquifer cleanup plan if required by § 147.3003(b) of this subpart.

(4) Any additional information that may be necessary to demonstrate that cleanup will not result in contaminants in excess of pre-injection water quality levels.

(b) In addition to the requirements of § 146.34(b) of this chapter, the Director shall consider any information required under § 146.34(a) of this chapter (as supplemented by this subpart) that has been gathered during construction.

§ 147.3016 Criteria and standards applicable to Class V wells.

In addition to the criteria and standards applicable to Class V wells set forth in Subpart F of Part 146 of this chapter, owners and operators of wells that do not fall within the Class IV category but that are used to dispose of radioactive wastes (as defined in 10 CFR Part 20, Appendix B, Table II, Column 2, but not including high level and transuranic wastes and spent nuclear fuel covered by 40 CFR Part 191) shall comply with all of the requirements applicable to Class I hazardous waste injection wells in 40 CFR Parts 124, 144 and 146 as supplemented by this subpart.

3. Part 147 is proposed to be amended by adding a new Subpart III as follows:

Subpart III—Lands of Certain Oklahoma Indian Tribes

Sec.

Subpart III—Lands of Certain Oklahoma Indian Tribes

§ 147.3100 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands in Oklahoma, except for that covering the Class II wells of the Five Civilized Tribes, is administered by EPA. The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the Osage Mineral Reserve (found at 40 CFR Part 147, Subpart GGG) and the Class II program for the Five Civilized Tribes, consists of the requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for all wells on Indian lands except Class II wells on the Osage Mineral Reserve and Class II wells on the lands of the Five Civilized Tribes is (June 10, 1987).

§ 147.3101 Public notice of permit actions.

(a) In addition to the notice requirements of § 124.10 of this chapter, the Director shall provide to the affected Tribal government all notices given to an affected State government under § 124.10(c) of this chapter.

(b) *Class I and III wells.* In addition to the notice requirements of § 124.10 of this chapter:

(1) Owners and operators of Class I and III wells shall notify each land owner and tenant within one-half mile of the well and the affected Tribal government prior to submitting an application for a permit, shall publish such notice in at least two newspapers of general circulation in the area of the proposed well, and shall broadcast notice over at least one local radio station. The permit applicant shall submit with his application a description of the way notice was given and the addresses to those to whom it was given.

(2) The Director shall publish a notice of availability of a draft permit in at least two newspapers of general circulation in the area of the proposed well, and broadcast notice over at least one local radio station. The public notice shall allow at least 45 days for public comment.

(c) *Class II wells.* In addition to the notice requirements of § 124.10 of this chapter:

(1) Owners and operators of Class II wells shall give notice of application for a permit to each landowner, tenant and operator of a producing lease within one-half mile of the well or project and to the affected Tribal government prior to submitting the application to the Director. The permit applicant shall include with the application a description of the way the notice was given and the addresses of those to whom it was given.

(2) In addition to the public notice required for each action listed in § 124.10(a) of this chapter, the Director shall also publish notice in a daily or weekly newspaper of general circulation in the affected area for actions concerning Class II wells.

(d) The Director may waive the requirement in paragraphs (b)(1) and (c)(1) of this section to give individual notice of intent to apply for a permit where it would be impractical, but notice to the affected Tribal government shall not be waived.

§ 147.3102 Plugging and abandonment plans.

In lieu of the requirements of § 144.28(c)(1) and (2)(i) through (iii) of this chapter, owners and operators of

Class II wells shall comply with the plugging and abandonment provisions of § 147.3108 of this subpart.

§ 147.3103 Fluid seals.

Notwithstanding § 144.28(f)(2) and § 146.12(c) of this chapter, owners and operators shall not use a fluid seal as an alternative to a packer.

§ 147.3104 Notice of abandonment.

(a) In addition to the notice required by § 144.28(j)(2) of this chapter, the owner or operator shall at the same time submit plugging information in conformance with § 147.3108 of this subpart including:

(1) Type and number of plugs;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

(b) In addition to the permit conditions specified in §§ 144.51 and 144.52 of this chapter, each owner and operator shall submit and each permit shall contain the following information (in conformance with § 146.3108 of this subpart):

(1) Type and number of plugs;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

§ 147.3105 Plugging and abandonment report.

(a) In lieu of the time periods for submitting a plugging report in § 144.28(k) of this chapter, owners and operators of Class I and III wells shall submit the report within 15 days of plugging the well and owners or operators of Class II wells within 30 days of plugging, or at the time of the next required operational report (whichever is less.) If the required operational report is due less than 15 days following completion of plugging, then the plugging report shall be submitted within 30 days for Class II wells and 15 days for Class I and III wells.

(b) In addition to the requirement of § 144.28(k)(1) of this chapter, owners and operators of Class II wells shall include a certification that the well was plugged in accordance with § 146.10 of this chapter and § 147.3109 of this subpart, and, if the actual plugging differed, specify the actual procedures used.

(c) The schedule upon which reports of plugging must be submitted are changed from those in § 144.51(o) to those specified in paragraph (a) of this section.

§ 147.3106 Area of review.

(a) When determining the area of review under § 146.6(b) of this chapter, the fixed radius shall be no less than one mile for Class I wells and one-half mile for Class II and III wells. In the case of an application for an area permit, determination of the area of review under § 146.6(b) shall be a fixed width of not less than one mile for the circumscribing area of Class I projects and one-half mile for the circumscribing area of Class II and III projects.

(b) However, in lieu of § 146.6(c) of this chapter, if the area of review is determined by a mathematical model pursuant to paragraph § 146.6(a) of this chapter, the permissible radius is the result of such calculation even if it is less than one mile for Class I wells and one-half mile for Class II and III wells.

§ 147.3107 Mechanical integrity.

(a) Monitoring of annulus pressure conducted pursuant to § 146.8(b)(1) shall be preceeded by an initial pressure test. A positive gauge pressure on the casing/tubing annulus (filled with liquid) shall be maintained continuously. The pressure shall be monitored monthly.

(b) Pressure tests conducted pursuant to § 146.8(b)(2) of this chapter shall be performed with a pressure of the casing/tubing annulus of at least 200 p.s.i. unless otherwise specified by the Director. In addition, pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 p.s.i. throughout the tubing length.

(c) Monitoring of enhanced recovery wells conducted pursuant to § 146.8(b)(3), must be preceeded by an initial pressure test that was conducted no more than 90 days prior to the commencement of monitoring.

(d) Radioactive tracer surveys shall be deemed acceptable methods of evaluating the absence of significant leaks under § 146.8(a)(1) of this chapter.

(e) Radioactive tracer surveys may be used to determine the absence of significant fluid movement under § 146.8(a)(2) of this chapter in appropriate hydrogeologic settings and in conjunction with at least one of the other alternatives in § 146.8(c) of this chapter.

§ 147.3108 Plugging Class I, II, and III wells.

In addition to the requirements of § 146.10 of this chapter, owners and operators shall comply with the following when plugging a well:

(a) For Class I and III wells:

(1) The well shall be filled with mud from the bottom of the well to a point one hundred (100) feet below the top of the highest disposal or injection zone and then with a cement plug from there to one hundred (100) feet above the top of the disposal or injection zone.

(2) A cement plug shall also be set from a point fifty (50) feet below the shoe of the surface casing to a point five (5) feet above the top of the lower USDW.

(3) A final cement plug shall extend from a point thirty feet below the ground surface to a point five (5) feet below the ground surface.

(4) All intervals between plugs shall be filled with mud.

(5) The top plug shall clearly show by permanent markings inscribed in the cement or on a steel plate embedded in the cement the well permit number and date of plugging.

(b) For Class II wells:

(1) The well shall be kept full of mud as casing is removed. No surface casing shall be removed without written approval from the Director.

(2) If surface casing is adequately set and cemented through all USDWs (set to at least 50 feet below the base of the lowest USDW), a plug shall be set at least 50 feet below the shoe of the casing and extending at least 50 feet above the shoe of the casing; or

(3) If the surface casing and cementing is inadequate, the well bore shall be filled with cement from a point 50 feet below the base of the USDW to a point 50 feet above the shoe of the surface casing, and any additional plugs as required by the Director.

(4) In all cases, the top 20 feet of the well bore below 3 feet of ground surface shall be filled with cement. Surface casing shall be cut off 3 feet below ground surface and covered with a secure steel cap on top of the surface pipe. The remaining 3 feet shall be filled with dirt.

(5) Except as provided in paragraph (b)(6) of this section, each producing or receiving formation shall be sealed off with a 50-foot cement plug placed at the base of the formation and a 50-foot cement plug placed at the top of the formation.

(6) The requirement in paragraph (b)(5) of this section does not apply if the producing/receiving formation is already sealed off from the well bore with adequate casing and cementing behind casing, and casing is not to be removed, or the only openings from the producing/receiving formation into the well bore are perforations in the casing, and the annulus between the casing and the outer walls of the well is filled with cement for a distance of 50 feet above the top of the formation. When such conditions exist, a bridge plug capped

with 10 feet of cement set at the top of the producing formation may be used.

(7) When specified by the Director, any incased hole below the shoe of any casing to be left in the well shall be filled with cement to a depth of at least 50 feet below the casing shoe, or the bottom of the hole, and the casing above the shoe shall be filled with cement to at least 50 feet above the shoe of the casing. If the well has a screen or liner which is not to be removed, the well bore shall be filled with cement from the base of the screen or liner to at least 50 feet above the top of the screen or liner.

(8) All intervals between cement plugs in the well bore must be filled with mud.

§ 147.3109 Mechanical integrity test.

The demonstrations of mechanical integrity required by § 146.14(b)(2) of this chapter prior to approval for the operation of a Class I well shall, for an existing well, be conducted no more than 90 days prior to application for the permit and the results included in the permit application. The owner or operator shall notify the Director at least seven days in advance of the time and date of the test so that EPA observers may be present.

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federal register

Monday
May 11, 1987

Part V

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Proposed Grant Guideline.

SUMMARY: This guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1987 State Justice Institute grants, cooperative agreements, and contracts.

DATES: The Institute invites public comment on the guideline until June 12, 1987.

ADDRESS: Comments should be sent to: State Justice Institute, 120 S. Fairfax St., Alexandria, VA. 22314.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at the above address, or at (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, Pub. L. 98–620, 42 U.S.C. 10701, et seq., the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. On March 9, 1987, the Institute published its FY 1987 Program Guideline in the **Federal Register**. 52 FR 7249. The Grant Guideline published for comment today implements the Act and the Program Guideline by setting forth the rules regarding the application for, and use of Institute funds.

Because the Institute is a non-profit private corporation and, except for very limited purposes, not an agency or instrumentality of the United States (42 U.S.C. 10704(c)(1)), many of the laws affecting the granting of appropriated Federal funds do not apply to Institute grants. As a matter of policy, however, the Institute has proposed to apply a number of Federal guidelines and requirements to the use of its funds. The Institute has, for example, proposed to adopt several Office of Management and Budget Circulars governing the use of Federal grant funds. See Section IX. A. Comment is specifically invited on this issue as well as those set forth below:

Administrative Role of the State Supreme Court or its Designated Agency or Council. Under the Act, applications for funding from a State or local court must be approved by the State's Supreme Court or its designated agency or council, which shall receive, administer and be accountable for all funds awarded to such courts. Form B (in Appendix 1) is a Certificate of State Approval that must be signed by the appropriate authority for each application submitted by a State or local court. The proposed grant supervision and monitoring responsibilities of the State Supreme Court, or its designee, are presented for comment in section IX B2.

Method of Payment. The Institute intends to establish as simple and expeditious a method of payment to grantees as possible, consistent with sound accounting and financial practices. At the present time, it appears that the relatively small number and size of anticipated Institute grants will preclude the Institute from using the new "Letter of Credit" system established by the Department of the Treasury. As a result, as specified in section IX G1., the Institute simply proposes at this time to use an efficient request for advance or reimbursement procedure. The Institute is exploring Electronic Fund Transfer systems and invites suggestions on those or other possible payment methods.

Audits. The Act requires the Institute to conduct, or require each recipient to provide for an annual fiscal audit. 42 U.S.C. 10711(c)(1). Comment is specifically invited on the nature of the audit to be required of Institute grantees (and subgrantees, in the case of State and local courts receiving Institute funds through their State Supreme Courts, or designees). The Institute would like to receive comment on whether it should (1) require an audit of the grantee's overall operations, as might be conducted by a Federal agency pursuant to the Single Audit Act, (2) require a more limited audit of the project actually supported by Institute and matching funds, or (3) permit the grantee to choose either method of audit.

Procurement. The draft guideline proposes to impose the same administrative requirements, conditions, and selection criteria on applicants seeking contracts for programmatic purposes, e.g., technical assistance contracts, as it would impose on applicants seeking grants. Comment is invited on whether separate procedures should be established for such contracts than are established for grants and cooperative agreements.

Application Form. The Institute invites comment on the clarity of the application form (Appendix 1, Form A), the nature of the information requested, and the need for any additional information.

Prospective applicants are encouraged to note the explanation of the matching requirements for Institute grants (sections VI C. and IX D1.), and to review the list of required assurances proposed in Form D (Appendix 1).

Finally, readers should note that only Appendix 1 is being published with the guideline. Applicants and other affected parties will be advised of the specific contents of the remaining appendices.

State Justice Institute Grant Guideline

Table of Contents

Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations providing for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute may also award funds to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

Approximately $6.7 million is available for grants, contracts, and cooperative agreements from FY 1987 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has

designated certain program areas as being of special interest.

The Institute has established two rounds of competition for FY 1987 funds, with concept paper submission deadlines of April 17 and September 18, 1987, respectively. This Guideline applies to formal applications submitted for the first round of funding.

The awards made by the State Justice Institute are governed by the requirements of this guideline and the authority conferred by Pub. L. 98–620, Title II, 42 U.S.C. 10701, *et seq.*

I. Background

The State Justice Institute ("Institute") was established by Pub. L. 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a state court administrator and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1987 is approximately $6.7 million. Through the award of grants, contracts and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

3. Participate in joint projects with other agencies;

4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

5. Encourage and assist in furthering judicial education;

6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During its first year of operation, the Institute is considering applications for funding support that address any of the areas specified in its enabling legislation. The Board has, however, designated certain program areas as being of "special interest". The experience of the Board in reviewing concept papers and applications during the first year, and other information received from the applicants, other interested parties, and the general public will shape the Board's priorities in future years.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms

for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will *not* be made available for ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Areas

1. General Description

Although applications in any of the foregoing areas are eligible for funding in FY 1987, the Institute is especially interested in funding those proposals that: (1) Go beyond existing arrangements to improve the judiciary; (2) address aspects of the State judicial systems that are in special need of serious attention; and (3) have national significance in terms of their impact or capability of being transferred to and adopted by other courts and jurisdictions.

A project will be identified as a "special interest" project if it meets the three criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below or (2) information coming to the attention of the Institute demonstrates that the project responds to another special need or interest of the State courts.

2. Specific Categories

The Board has designated the areas set forth below as "special interest" program categories. The order of listing does not imply any ordering of priorities among the program areas. The Board is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions.

The "special interest" program areas are:

a. The development and implementation of innovative measures to encourage and enhance judicial careers, other than direct increases in salary;

b. Education and training for judges and other key court personnel, including the development of innovative training materials and curricula, the improvement of existing court education programs, and the preparation of State court education plans to ensure a comprehensive training program and the effective allocation of limited court education resources;

c. The implementation and evaluation of dispute resolution methods that have a substantial likelihood of resolving disputes more fairly, more expeditiously, and less expensively than the traditional judicial process;

d. The application of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels, including the development of materials to assist judges and court managers in selecting technology appropriate to a court's needs;

e. The implementation and testing of legal and administrative procedures relating to jurors, including those with a substantial likelihood of improving juror use and jury system management, clarifying juror orientation and instructions, and otherwise simplifying, making fairer, expediting and reducing the cost of the jury process;

f. The implementation and evaluation of programs and procedures designed to substantially reduce expense and delay in litigation at the trial or the appellate level or both, including the use of differentiated case processing and other innovative techniques, and the collection, compilation, and analysis of statistical data necessary for determining the causes of unnecessary expense and delay, isolating areas of concern, and evaluating the efficacy of "solutions";

g. The implementation and evaluation of procedures for effectively imposing, collecting, and enforcing orders to pay fines, restitution, assessments, and other monetary penalties or obligations;

h. The implementation and testing of innovative court procedures for handling domestic violence cases effectively and expeditiously;

i. The implementation and testing of court-based programs and procedures providing fairer treatment for victims of crimes and witnesses in both civil and criminal cases;

j. Research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

- Processing complex multistate litigation in State courts;
- Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;
- Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and
- Otherwise allocating judicial burdens between and among Federal and State courts.

Other areas of research would include studies examining the likely impact of the elimination or restriction of Federal diversity jurisdiction on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases where there is joint jurisdiction; and

k. Technical assistance programs to transfer effective programs and procedures in any of the foregoing "special interest" categories to other jurisdictions.

Applications which address one or more "special interest" program areas will be accorded a preference in the rating process. (See the selection criteria listed in section VI, Application Review Procedures.)

III. Definitions

The following definitions apply for the purposes of this Guideline:

A. *Institute:* The State Justice Institute.

B. *State Supreme Court:* The court of last resort in a state. For the purposes of the financial requirements and reporting forms set forth in this Guideline, *State Supreme Court* includes the agency or council it designates to perform the financial functions described in this Guideline.

C. *Designated Agency or Council:* The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. *Grantor Agency:* The State Justice Institute.

E. *Grantee:* The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court.

F. *Subgrantee:* A State or local court which receives Institute funds through the State Supreme Court.

G. *Match:* The portion of project costs not borne by the Institute. *Match* includes both cash and in-kind contributions.

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments;

and national nonprofit organizations providing for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fee.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Applicants other than State or local courts are expected to specify in their applications whether they are entitled to funding priority and, in the case of applicants who are not entitled to the priority established by section 10705(b)(2), to discuss how their projects will serve the objectives of the relevant program area(s) set forth in section II above. Governmental applicants other than courts must also explain why the proposed program cannot be adequately provided through nongovernmental organizations.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section IX.B.2 of this guideline.

V. Types of Projects and Amounts of Awards

The Institute has placed no limitation on the overall number of awards or the number of awards in each area of interest. The general types of projects are:

A. Education and training;
B. Research and evaluation;
C. Demonstration; and
D. Technical assistance.

The Board will give serious consideration to applications seeking funding in amounts up to $500,000. Awards in excess of $500,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally. Proposed project periods should not exceed 24 months.

The Institute desires to reserve some funds for small awards (up to $50,000) to support research, studies, and project designs, particularly with respect to the subjects noted in special interest program area (j).

VI. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

All applications will be rated on the basis of the criteria set forth below. To facilitate the review process, the Institute staff will use a point system to score all applications; the staff's scores, however, will not be binding on the Board's funding decisions.

The Institute will accord the greatest weight to the following criteria:

—The soundness of the methodology described;
—The qualifications of the project's staff;
—The applicant's management plan and capabilities; and
—The reasonableness of the proposed budget.

Substantial weight will also be accorded to:

—Whether the application proposes a project in a "special interest" area as discussed in section II.B above;
—The demonstration of need for the project;
—The demonstration of the project's replicability in other jurisdictions;
—The demonstration of the benefits to be derived from the project; and
—The demonstration of cooperation and support of other organizations and agencies that may be affected by the project.

In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section III above; the availability of financial assistance from other sources for the project; the anticipated distribution of funding for other projects by subject matter and geographical location; the amount and nature (cash or non-cash) of the applicant's anticipated match; and the degree of commitment demonstrated by those responsible for providing the match (i.e., immediate availability of match versus a verbal commitment to secure match).

C. Review and Approval Process

Applications will be competitively reviewed by the Board of Directors of the Institute. Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute. All applications considered by the Board will first be reviewed by the Institute staff. When necessary, applications may be reviewed by outside experts.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Intention to Award

The State Justice Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective concept papers and applications.

VII. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. *State and Local Court Systems.* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). Appendix 2 to this Guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. *Priority Recipients.* Applicants other than State or local courts are expected to specify in their applications whether they are entitled to funding priority as described in section III above, or, in the case of applicants who are not entitled to the priority established by section 10705(b)(2), to discuss how their projects will serve the objectives of the relevant program area(s) set forth in section II above. Governmental applicants other than courts must also explain why the proposed program cannot be adequately provided through nongovernmental organizations.

C. *Matching Requirements.* All awards to State or local judicial systems require a match from private or public sources of not less than 50 percent of the total cost of the award. A cash match, non-cash match, or both, may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d).

Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project (see section VI.B above).

D. *Conflict of Interest.* Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No officials or employees of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, officials or employees of recipient courts or organizations shall avoid any action which might result in or create the appearance of:

(a) Using his or her official position for private gain;

(b) Giving preferential treatment to any person;

(c) Losing complete independence or impartiality;

(d) Making an official decision outside official channels; or

(e) Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposal or invitations for bid issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding or submitting a proposal to compete for the award of such procurement.

E. *Lobbying.* Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

F. *Political Activities.* No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

G. *Advocacy.* No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

H. *Supplantation and Construction.* To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. To solely purchase equipment for a court system.

I. *Refunding of Applications.* Unless the terms of an award expressly obligate the Institute to approve refunding a project in a subsequent time period, no application submitted by a recipient that seeks further funding from the Institute for the same or another project shall be entitled to treatment as an application for refunding for the purposes of 42 U.S.C. 10706(a)(3) or 42 U.S.C. 10708.

J. *Reporting Requirements.* Recipients of Institute funds shall submit Quarterly Progress Reports within 30 days of the close of each calendar quarter. These reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section X.G.2 of this guideline.

K. *Audit.* The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit. (See section IX.J of this Guideline for additional details.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

L. *Suspension of Funding.* The Institute may, after providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, terminate or suspend funding of a project that fails to conform to the requirements or statutory objectives of the State Justice Institute Act or that fails to conform substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(1).

M. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

N. *Disclaimer.* Recipients of Institute funds shall prominently display the following disclaimer on all project-related products developed with Institute funds:

"This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

O. *Copyrights.* Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

VIII. Application Requirements

An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project abstract and program narrative, and certain certifications and assurances. These documents are described below. Appendix 1 contains a set of the financial and administrative forms with detailed explanations and instructions.

A. Forms

1. *Application Form* (FORM A)—The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and correct, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. *Certificate of State Approval* (FORM B)—An application from a State or local court must include a copy of FORM B signed by the State's Chief Judge or Chief Justice, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further, that if funding for the project is approved by the Institute, that court, or designated agency or council, will receive, administer, and be accountable for the awarded funds.

3. *Budget Forms* (FORM C1 & C2)—Applicants may submit the proposed project budget either in the tabular format of FORM C1 or in the spreadsheet format of FORM C2. Applicants requesting more than $150,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for the portion of the project extending beyond month 12.

In addition to FORM C1 or C2, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. *Assurances* (FORM D)—This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one, single space page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative should not exceed 25 double space pages on 8½ x 11 inch paper. Margins should not be less than 1 inch. The page limit does not include appendices containing résumés and letters of cooperation or endorsement. Additional background material may be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics.

1. *Project Objectives*—A clear concise statement of what the proposed project is intended to accomplish.

2. *Program Areas to be Covered*—A discussion of the relationship of the proposed work to the Program Areas listed in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest Program Areas.

3. *Need for the Project*—If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs cannot be met through the use of existing materials, programs, procedures, services or other resources. (For example, if the project proposes development of a training program or a court management information system, there should be an explanation of why the training curricula or systems being used by other jurisdictions or providers do not provide a satisfactory solution.)

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. *Tasks and Methods*—A delineation of the tasks to be performed and the methods to be used for accomplishing each task including:

- For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results.
- For education and training projects, the instructional methods to be used; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; the audience anticipated and how it will be obtained; the cost to participants; and the methods to be used for evaluating the usefulness and effectiveness of the training.
- For demonstration projects, how the sites will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored; and how the results of the demonstration will be determined and assessed.
- For technical assistance projects, the types of assistance that will be provided; the particular program area(s) for which assistance will be provided, how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; what will be the cost to recipients; and how the usefulness and impact of the technical assistance will be determined and assessed.

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix.

5. *Project Management*—A detailed management plan including the starting and completion date for each task, the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter.

6. *Products*—A description of the products to be developed by the project

(e.g., monographs, training curricula and materials, videotapes, articles, handbooks) including when they will be submitted and how they will be disseminated. The products of research and evaluation projects should normally include an executive summary of the final report.

7. *Applicant Status*—A statement demonstrating that the applicant (if the applicant is not a State or local court) qualifies as either a national nonprofit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national nonprofit organization providing for the education and training of State court judges and support personnel. If the applicant is neither such an organization nor a State court, this section must demonstrate how it will serve the objectives of the relevant program area(s) in terms of replicability and other appropriate factors. Applicants that are units of Federal, State, or local government must demonstrate that the proposed services are not available from nongovernmental sources.

8. *Staff Capability*—A summary of the training and experience of the key staff members that qualify them for conducting and managing the proposed project. If one or more key staff members are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. *Organizational Capacity*—A statement describing the capacity of the applicant to administer the grant funds including the financial systems used to monitor project expenditures and income (if any), and a summary of the grantee's past experience in administering grants, as well as any resources or capabilities that the grantee has that will particularly assist in the successful completion of the project.

IX. Submission Requirements

One copy of the application package containing an original signature on FORM A (and FORM B, if the application is from a State or local court) and 13 photocopies of the application package must be provided to the State Justice Institute. All applications must be received by the State Justice Institute on or before 5:30 p.m. Eastern Daylight Time on July 24, 1987. Applications should be sent to: State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

For additional information, contact: Richard Van Duizend, Deputy Director, State Justice Institute, (703) 684–6100.

X. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, state and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budoet (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Followup at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Nonprofit Organizations.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include the accounting of receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project including proper accounting and financial recordkeeping by the subgrantee. These responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records, system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget on which its award commitment will be based. The detail of each project

budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds that the requirements and limitations of this Guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see section IX.J).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt and disposition of all funds (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies projected historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Controls funds and other resources to assure that the expenditure of funds and use of property are in conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

For an outline of recommended elements to be considered when establishing an accounting system, refer to Appendix 4.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of, or in proportion to the obligation of Institute funds. However, the full matching share must be obligated by the end of the period for which the Institute funds have been made available for obligation under an approved project.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of them in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section.

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand and ready access should be assured.

F. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts. Local units of government that are direct grantees and nonprofit organizations must refund any interest earned.

2. Other Project Income

a. *Royalties.* The grantee/subgrantee shall retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

b. *Registration/Tuition Fees and Other.* These types of project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly. All checks drawn for the payment of fund requests are prepared and disbursed by the Institute. The Request for Advance or Reimbursement, along with the instructions for its preparation, is contained in Appendix 5.

b. *Termination of Advance Funding.* When a grantee organization receiving cash advances from the Institute—

(i) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(ii) Engages in the improper award and administration of subgrants or contracts; or

(iii) Is unable to submit reliable and/or timely reports,

the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient the Institute reserves the right to suspend payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Whatever payment method is used, recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

The Financial Status Report is required from all grantees for each active quarter on a calendar-quarter basis. It is designed to reflect financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with detailed instructions for its preparation and reporting due dates are contained in Appendix 6.

3. Continuation Support

Failure of the grantee organization to submit the required financial and program reports may result in a suspension of the grant payments. These procedures are also applicable to audit reports of grantee organizations that are unresolved.

H. Allowability of Costs

1. Generally

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in OMB Circulars A–87, *Cost Principles for State and Local Governments;* A–21, *Cost Principles Applicable to Grants and Contracts with Educational Institutions;* and A–122, *Cost Principles for Non-Profit Organizations.*

2. Costs Requiring Prior Approval

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the starting date of the grant period.

b. *Automatic Data Processing (ADP) Equipment and Software.* The written prior approval of the Institute is required where the amount of the equipment and software to be purchased exceeds $50,000.

c. *Consultants.* The written prior approval of the Institute is required where the rate of compensation to be paid a consultant exceeds $200 a day.

3. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.* (1) The Institute will accept any indirect cost rate or allocation plan previously approved for a grantee by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(3) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that subcontracts are excluded from the base for overhead recovery. The term subcontract means any contract awarded under the grant.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of OMB Circular A–102. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of OMB Circular A–110.

2. Property Management Standards

The property management standards as prescribed in Attachment N of both OMB Circulars A–102 and A–110 shall be applicable to all grantees and subgrantees of Institute funds except as provided in subsection b. below.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

b. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not received, or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

J. Audit Requirements

1. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities.

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles.

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures.

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements, or on the awards tested.

2. Implementation

Each grantee (including State or local courts receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute.

If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. The grantee, in turn, shall promptly notify the Institute of the illegal acts or irregularities and of proposed and actual actions, if any.

Failure to have audits performed as required may result in the withholding of new awards and/or suspension of funds or change in the method of payment on active grants.

3. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: followup, maintaining a record of the action taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and action taken.

It should be noted that it is the general policy of the State Justice Institute not to make new grant awards to applicants having an unresolved audit report involving Institute awards.

K. Close-Out of Grants

1. Definition

Close-out is a process in which the Institute determines that all applicable administrative actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date) the following documents must be submitted by the grantee to the Institute.

a. *Financial Status Report.* The FINAL report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award amount by the Institute. Grantees on a check-issued basis, who have drawn down funds in excess of their obligation/expenditures, shall return unused funds to the Institute at the same time they submit the final report.

b. *Final Progress Report.* This report should be prepared in accordance with instructions provided by the Institute.

XI. Future Funding

A second round of funding by the State Justice Institute will begin with the submission of concept papers by September 18, 1987. The Institute will invite parties submitting approved Round 2 concept papers to submit formal applications by December 18, 1987. The Institute anticipates that awards for Round 2 will be approved in January 1988.

Parties interested in submitting concept papers for Round 2 should refer to the Institute's Program Guideline published in the March 9, 1987 **Federal Register** (52 FR 7249), for instructions on the preparation of concept papers. Copies of the Guideline are available from the Institute.

BILLING CODE 6820-SC-M

FORM A

APPENDIX 1

STATE JUSTICE INSTITUTE APPLICATION

1. APPLICANT

a. Applicant Name _____

_____

b. Organization Unit _____

c. Street/P.O. Box _____

d. City _____ e. State _____

f. Zip Code _____

g. Contact Person (telephone number & name) _____

_____

3. EMPLOYER IDENTIFICATION NUMBER (EIN) _____

4. ENTITY RESPONSIBLE FOR FUNDS (if different from applicant)

a. Name of Responsible Entity _____

b. Street/P.O. Box _____

c. City _____

d. State _____ e. Zip Code _____

f. Title, Name and Telephone Number of Responsible Person _____

_____

5. CONGRESSIONAL DISTRICT OF: _____ Applicant _____ Project

6. TITLE OF PROPOSED PROJECT _____

_____

8. PROPOSED START DATE _____

9. PROJECT DURATION (Months) _____

10. AMOUNT REQUESTED $ _____

12. AMOUNT OF MATCH $ _____

a. Cash match $ _____

b. Non-cash match $_____

13. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:

Source _____

Date Submitted _____ Amount Sought _____

Disposition (if any) or Current Status _____

2. TYPE OF APPLICANT
(circle appropriate letter)

a. State or local court
b. National organization controlled by State judicial board
c. National state court, education/training organization
d. College or University
e. Other non-profit organization or agency
f. Individual
g. Corporation or partnership
h. Unit of executive or legislative branch of government
i. Other _____ specify

7. TYPE OF PROJECT
(circle appropriate letter)

a. Education/Training
b. Research/Evaluation
c. Demonstration
d. Technical Assistance
e. Other _____ specify

11. TYPE OF APPLICATION
(circle appropriate letter)

a. New
b. Continuation
c. Supplemental

14. CERTIFICATION

ON BEHALF OF THE APPLICANT, I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE INFORMATION IN THIS APPLICATION IS TRUE AND CORRECT. I HAVE READ THE ATTACHED (FORM D) ASSURANCES AND UNDERSTAND THAT IF THIS APPLICATION IS APPROVED FOR FUNDING THE AWARD WILL BE SUBJECT TO THESE ASSURANCES. I CERTIFY THAT THE APPLICANT WILL COMPLY WITH THESE ASSURANCES IF THE APPLICATION IS APPROVED THAT I AMLAWFULLY AUTHORIZED TO MAKE THESE REPRESENTATIONS ON BEHALF OF THE APPLICANT.

15. _____ SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT (for application from State and local courts, must include Form B, Certificate of State Approval)

_____ DATE

FOR INSTITUTE USE ONLY

16. APPLICATION NUMBER

A _____

17. DATE RECEIVED _____

18. ACTION TAKEN

a. Awarded d. Deferred
b. Rejected e. Withdrawn
c. Returned for Modification f. Other _____

19. ACTION DATE _____

20. TYPE OF AWARD:

a. Grant
b. Cooperative Agreement
c. Contract

21. AMOUNT OF AWARD $ _____

BILLING CODE 6820-SC-C

Instructions for SJI Application—Form A

Applicant Information

1. (a–g) Legal Name Of Applicant court, entity or individual; Name Of The Organizational Unit, if any, that will conduct the project; Complete Address of applicant; Name and telephone number of a Contact Person who can provide further information about this application.

2. (a) State And Local Courts include all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts supported primarily by State, County, municipal, or other non-federal funds. Agencies of state and local courts include all governmental offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

(b) National Organizations Controlled By The State Judicial Branch include national non-profit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments.

(c) National State Court Education/Training Organizations include national non-profit organizations for the education and training of judges and support personnel of the judicial branch of State government.

(d) College Or University includes all institutions of higher education.

(e) Other Non-profit Organization or Agency includes those non-profit organizations and private agencies with expertise in judicial administration not included in sub-paragraphs (b)–(d).

(f) Individual means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

(g) Corporation Or Partnership includes for-profit and not-for-profit entities not falling within one of the other categories.

(h) Unit Of Executive Or Legislative Branch Of Government includes offices, programs, commissions, committees, or other entities that are supervised by or report for administrative purposes to the chief executive or the head of an executive branch agency or his or her designee, or to any legislative officer, chairperson or official.

3. Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

4. Entity Responsible For Funds is the court or organization that will receive, administer, and account for any moneys awarded. For example, if the applicant is a State or local court, the responsible entity would be the State's supreme court or its designated agency or council in accordance with 42 U.S.C. 10705(b)(4). If the applicant is a special university program, the responsible entity may be the program, the university itself, or the university's grant office depending on the university's structure. Applicants should complete this block only if the entity that will be responsible for the funds is different from the applicant.

5. Enter the applicant's Congressional District and the Congressional District(s) in which most of the project activities will take place. If the project activities are not site-specific, for example a series of training workshops that will bring together participants from around the State, the country, or from a particular region, enter statewide, national, or regional, as appropriate in the space provided.

6. The Title Of the Proposed Project should reflect the objectives of the activities to be conducted.

7. (a–e) Insert the letter of the Type of activities that best characterizes the project. If project funds will be substantially divided among two or more types of activities, insert the letters for each of those activities.

8. The Proposed Start Date of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award. An explanation should be provided in the Program Narrative if the proposed start date is more than 90 days after the estimate award date set forth in the Application Review Procedures section of the current Grant Application Guidelines.

9. Project Duration refers to the number of months the applicant estimated will be needed to complete all project tasks after the proposed start date.

10. Insert the Amount Requested from the State Justice Institute to conduct the project.

11. (a–c) New refers to the first award of State Justice Institute funds for a particular project, whether or not the applicant has received previous awards from the Institute.

Continuation refers to an extension for an additional funding period.

Supplemental refers to the award of additional funds to permit an existing project to complete the tasks originally proposed or to augment the scope of the project.

12. (a–b) The Amount Of Match is the amount, if any, to be contributed to the project by the applicant, by a unit of State or local government, by a Federal agency, or by private sources. See 42 U.S.C. 10705(d).

The Amount Of Cash Match refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

The Amount Of Non-cash Match refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project. The applicant should describe, in detail, both the value it assigns to in-kind contributions and the basis for determining that value.

13. If this application or an application requesting support for the same project or an essentially similar project has been Previously Submitted to another funding source (Federal or private), the name of the source, the date of the previous submission, the amount of funding sought, and disposition (if any) should be entered.

Form B

State Justice Institute

Certificate of State Approval

The _____

Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled

_____

prepared by _____

Name of Applicant

approves its submission to the State Justice Institute, and agrees to receive, administer and be accountable for all funds awarded by the Institute pursuant to the application.

_____

Signature

_____

Name

_____

Title

_____

Date

Instructions—Form B

The State Justice Institute Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

Form B or its equivalent must therefore be included in applications submitted by all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts supported primarily by State, county, municipal, or other non-federal funds, and by all agencies and offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge of such a court, or his or her designee.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or

by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix 2 of the State Justice Institute Application Guideline, evidence of the new or additional designation should be attached.

Form C1 STATE JUSTICE INSTITUTE

Applicant: _____
Project Title: _____
For Project Activity from _____ to _____
Total Amount Requested for Project from SJI $_____

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND SUPPORT	TOTAL
Personnel							
Fringe Benefits							
Consultant Contractual							
Travel							
Equipment							
Supplies							
Telephone							
Postage							
Printing/Photocopying							
Audit							
Other Specify							
Direct Costs							
Indirect Costs							
Total							

Form C2 STATE JUSTICE INSTITUTE

Applicant: _____
Project Title: _____
For Project Activity from _____ to _____
Total Amount Requested for Project from SJI $_____

ITEM	TASK 1	TASK 2	TASK 3	TASK 4	TASK 5	TASK 6	TASK 7	TOTAL
Personnel								
Fringe Benefits								
Consultant Contractual								
Travel								
Equipment								
Supplies								
Telephone								
Postage								
Printing/ Photocopying								
Audit								
Other Specify								
Direct Costs								
Indirect Costs								
SJI TOTAL								
STATE								
FEDERAL								
APPLICANT								
OTHER								
IN-KIND								
Total								

Application Budget

Applicants may submit the proposed project budgets either in the tabular format of Form C1 or in a spreadsheet format similar to Form C2. Applicants requesting more than $150,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for each succeeding twelve-month period or a portion thereof beyond month 12.

In addition to Form C1 or C2, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. If the applicant is requesting indirect costs

and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate together with a copy of the letter or other official document stating that it has been approved should be attached.

If funds from other sources have been requested either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

Form D

State Justice Institute

Assurances

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds; and that the applicant will immediately take any measures necessary to effectuate this assurance;

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies; to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body;

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute;

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. Research or statistical information that is furnished during the course of the project and that is identifiable to any specific private person, will not be used or revealed for any purpose other than the purpose for which it was obtained, nor will such information or copies thereof be offered as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award document; and that material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

10. The following statement will be prominently displayed on all products prepared as a result of the project:

This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmakers, etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

11. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

12. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period; that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

13. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

14. The person signing this application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

David I. Tevelin,

Executive Director.

[FR Doc. 87-10476 Filed 5-8-87; 8:45 am]

BILLING CODE 6820-SC-M

federal register

Monday
May 11, 1987

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 785, and 827
Permanent Regulatory Programs; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants: Performance Standards; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 785, and 827

Permanent Regulatory Programs; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants: Performance Standards

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its regulations applicable to coal preparation plants. This action is taken in compliance with the District Court for the District of Columbia's July 6, 1984, ruling in *In Re: Permanent Surface Mining Regulation Litigation (II)* and supersedes an interim final rulemaking from July 10, 1985. The revised regulations (1) bring additional coal preparation plants under the permanent program regulations of the Surface Mining Control and Reclamation Act of 1977 (the Act); (2) allow persons operating coal preparation plants not previously subject to OSMRE rules a certain period of time to obtain the permit required as a result of the Court ruling; and (3) establish performance standards for such plants or facilities.

DATE: This rule is effective on June 10, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond Aufmuth, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, DC 20240: Telephone: (202) 343–5843.

SUPPLEMENTARY INFORMATION:

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, sets forth general regulatory requirements governing certain activities associated with coal mining. One of those activities is the preparation and processing of coal.

In September 1977, OSMRE proposed interim program regulations which defined "Coal preparation" in very narrow terms, which meant the treatment of coal to improve its quality and refers to the removal of impurities and the sizing of coal to meet market specifications (42 FR 44956).

In December of 1977, OSMRE published the final interim program which, in response to numerous comments, added a definition of "waste" which included materials wasted or otherwise separated from the product coal and retained separation of impurities as a key element in the definition of preparation. (42 FR 62646).

The proposed permanent program rules published in September 1978 included a definition of the term "coal processing waste" which superseded the definition of "waste" above. It was intended to differentiate spoil, overburden and solid waste from the materials subject to the standards found at 30 CFR 816.81–88/817.81–88, "coal mine waste" (43 FR 41688). These rules also proposed a definition of "coal processing plant" which contained separation of impurities as an integral part of the definition (43 FR 41804).

In March 1979, the final permanent program preamble, in a discussion explaining the authority of OSMRE and the states, included ". . . . coal processing plants no matter where located." (44 FR 15095) OSMRE regulated these facilities because associated with coal processing plants are coal wastes, waste piles, disposal sites, and other features which can seriously damage the environment which OSMRE is authorized under the Act to protect (44 FR 15292–3).

In this regulation the OSMRE declined to add the phrase "crushing and screening" to the final definition of "surface coal mining operations" at 30 CFR 700.5, because both the proposed and final definition contained phrases which are readily interpreted to include crushing and screening (44 FR 14914). However, neither the preamble nor the regulations addressing coal preparation plants at 30 CFR Part 827 mention "crushing or screening" and the phrase "and separates coal from its impurities" was retained in the final definition of coal preparation without preamble discussion.

In June 1980, OSMRE proposed to amend the definition of coal processing plants by changing the phrase" . . . *and* separated from its impurities" to ". . . *or* separated from its impurities". This was done to "clarify that chemical or physical processing is included within the scope regardless of whether processing is accomplished by separation of coal from its impurities" (45 FR 42335). However there had been no previous preamble discussions of this definition implying such an interpretation. The proposed rule was never promulgated.

Under proposed revisions in June 1982, OSMRE would regulate . . . coal processing plants and associated coal waste disposal areas so long as they are used "in connection with a coal mining activity" (47 FR 27688). As with the 1979 rules, coal processing plants at the point of ultimate coal use were not regulated since these activities would not be considered to be "in connection with" a coal mine.

Within the 1982 proposed revisions (47 FR 27690), a new definition for coal processing was proposed. The language was similar to the 1979 final rule and included this phrase "and separating coal from its impurities". However, in contrast to the 1980 proposed change, the preamble clarified that this proposed definition did not include coal facilities that do not result in the production of a coal processing waste product. By clarifying that coal processing includes only those activities where coal is separated from its impurities, the definition closely followed the common usage of the term in industry and provided for the regulation of those coal processing activities most likely to be associated with the potential for adverse environmental impacts on the land surface as discussed in the 1979 rule.

On May 5, 1983, OSMRE promulgated a final rule establishing regulations for the control of offsite coal preparation plants and support facilities, 48 FR 20392 (1983). In order to clarify OSMRE's jurisdiction, OSMRE adopted new definitions of "coal preparation or coal processing," "coal preparation plant," and "support facilities" and provided new preamble discussions of those rules. In part, the rules adopted in 1983 included a definition of "coal processing or coal preparation" which required that coal be separated from its impurities. The 1983 definition of "support facilities" included proximity as one factor to be considered in making the determination whether a facility was a support facility.

These definitions were challenged in *In Re: Permanent Surface Mining Regulation Litigation (II)*, Civil Action No. 79–1144 (D.D.C. 1984). In a July 6, 1984, opinion in that case, the District Court for the District of Columbia determined that OSMRE's rule was improperly narrow in contrast to the regulatory scope of the Act. Specifically, the Court held that facilities which in any way leach, chemically process, or physically process coal should be regulated as coal preparation plants even if they do not separate coal from its impurities. The Court also held that the Act did not support the

consideration of proximity in determining whether a facility was a support facility. As a result of this ruling, the definitions of "surface coal mining operations," "coal preparation or coal processing," and "coal preparation plant" were remanded to the Secretary. Although the definition of "support facility" was not remanded, the Court's Memorandum Opinion indicated that it also could not stand.

In order to implement the District Court's Order concerning offsite coal preparation plants, OSMRE adopted an interim final rule, which became effective September 10, 1985 (50 FR 28180, July 10, 1985). The interim final rule revised the definition of "surface coal mining operations" in order to clarify that chemical or physical processing of coal would be regulated whenever they were in connection with coal mining. The revision made clear that OSMRE no longer considers the phrase "chemical or physical processing" to be modified by "in situ."

The rule also removed the definition of "coal processing or coal preparation" and adopted new definitions of "coal preparation" and "coal preparation plants" which include crushing, screening and sizing operations as well as other coal processing. The interim final rule also suspended the definition of "support facilities" and adopted performance standards for coal preparation plants.

At the same time as the interim final rule, OSMRE proposed the same language, in order to allow public comment on the rule (50 FR 28180, July 10, 1985). This notice finalizes the rules proposed on July 10, 1985.

II. Discussion of Comments Received and Rules Adopted

A. Amendment to Definition of "Surface Coal Mining Operations"

The statutory authority for the regulation of offsite coal preparation plants originates from the definition of "surface coal mining operations" in section 701(28)(A) of the Act. That definition reads as follows:

"[S]urface coal mining operations" means—[A] activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 516 surface operations and surface impacts incident to an underground coal mine, the a products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: *Provided, however,* that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to section 512 of this Act; and [B] the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

OSMRE's 1983 regulatory definition of "surface coal mining operations" at 30 CFR 700.5 tracked its statutory counterpart very closely. However, it differed from the statutory definition because several grammatical and punctuation changes had been made to clarify the statutory language. The regulatory definition also reflects clarified language with regard to extraction of coal form coal refuse piles. A complete discussion of the 1983 rule appears at 48 FR 20392, May 5, 1983.

This final rule revises the first paragraph of the 1983 definition in accordance with the District Court's interpretation of the statutory definition. Specifically, the comma between distillation and retorting will be replaced by an "or" and a semicolon will be placed after the phrase "in situ distillation or retorting." This change will mean that "leaching, chemical or physical processing" will no longer be modified by the phrase "in situ." Thus, these activities will be regulated wherever they occur in connection with coal mining.

The new definition revises paragraph (A) to read as follows:

Surface coal mining operations means—(A) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 516 of the Act, surface operations and subject to the requirements of section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 512 of the Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles.

Several commenters requested the Secretary to respond to questions with respect to the changes in this definition. Specifically, many commenters wanted to know whether the definition includes coal crushing, screening and sizing activities which do not separate coal from its impurities. Apparently, some commenters were unsure whether the Secretary considers coal crushing, screening and sizing operations to be surface coal mining operations. Under the definition adopted, "leaching, chemical or physical processing of coal" are surface coal mining operations when they are conducted in connection with a coal mine without regard to whether a waste product is produced. Plainly coal crushing, screening and sizing activities involve the physical processing of coal. Under the definition of "coal preparation" adopted today (see below), facilities in connection with a coal mine which do not separate coal from its impurities but which otherwise engage in physical or chemical processing (i.e.: crushing, screening, and sizing facilities) will be regulated as coal preparation plants.

Several commenters also asked whether the phrase "cleaning, concentrating, or other processing or preparation" includes crushing, screening and sizing activities which do not separate coal from its impurities. Merely changing the size of coal is not

cleaning or concentrating it. Furthermore, since crushing, screening and sizing are physical processing, it would be redundant to treat them as other processing. Nonetheless, these activities when in connection with a coal mine are included in the definition of surface coal mining operations. Several commenters asked whether the Secretary places any other restriction on the regulation of facilities which crush, screen and size coal and do not separate coal from its impurities. Under the rule adopted, these operations will be treated like all other coal preparation plants. Thus, they will be regulated wherever they occur, unless they are operated in connection with the end user of the coal. For a discussion of OSMRE's interpretation of the phrase, "in connection with" a coal mine and "in connection with" an end user see 48 FR 20392, 20393, May 5, 1983.

Some commenters felt that the definition of surface coal mining operations should include an explanation of when "power plant" processing operations were "surface coal mining operations." Treatment of facilities located at the point of coal use was discussed in the preamble to the May 5, 1983 rulemaking (48 FR 20392). That discussion is entirely relevant, and contains the following paragraph:

> OSM does not believe that its jurisdiction extends to facilities which are operated solely in conneciton with the end user of the coal product. A facility will not be deemed to be operated in connection with a mine if it is located at the point of ultimate coal use unless it is also located at the site of the mine. OSM will treat all facilities which handle coal as either "in connection with" a mine or "in connection with" an end user (48 FR 20393, May 5, 1983).

This statement was issued in the context of a regulatory scheme that did not regulate as processing plants, facilities which solely crushed or sized coal. Now that such facilities are considered surface coal mining operations, the 1983 interpretation may be viewed as expansive. In order to allow for a full discussion of this issue, OSMRE intends to commence rulemaking with respect to the phrase "in connection with" in the near future.

Commenters requested clarification of what types of facilities are covered by the definitions discussed in A and B above. For instance, one commenter was unsure whether a coal slurry fuel manufacturing plant would have to be regulated. In such a situation, the regulatory authority would have to evaluate whether the facility processed coal as opposed to producing a different product as an end user of coal. However, OSMRE's future rulemaking on "in connection with" may further clarify this issue.

OSMRE received several comments on the applicability of the definition to loading facilities. The statutory definition restricts OSMRE's regulation of loading facilities to "loading of coal at or near a mine site." OSMRE intends to regulate all loading facilities which are at or near a mine site, and believes it may not regulate loading facilities which are not so located, unless other regulated activities are also conducted such as crushing or sizing which would make the facility a coal preparation plant. One commenter asserted that OSMRE should regulate unloading facilities; OSMRE lacks such jurisdiction, unless such facilities are part of or are resulting from or incidental to a coal processing plant or some other regulated facility.

Some commenters felt that once coal had entered interstate commerce, OSMRE had no jurisdiction over coal preparation plants processing such coal. Under the District Court opinion, the Secretary must regulate coal processing even if it is quite distant from a mine, if it is in conneciton with a mine. The issue of "in connection with" will be explored in further rulemaking as noted above.

Some commenters felt that the proposed definition failed to clearly define "surface coal mining operations" to ensure that leaching, physical processing and chemical processing are within the coverage of the definition whether or not conducted in situ and whether or not they separate coal from its impurities. The Secretary has reexamined the proposed language and believes the punctuation changes clearly delineate that the phrase "in situ" modifies the words "distillation or retorting" *only* and that chemical or physical processing and leaching activities are now clearly identified as a separate category of regulable activities. No further ambiguity is anticipated.

B. Definitions at § 701.5

1. Coal Preparation

This rule will replace the 1983 definition of "coal preparation or coal processing" which was formulated on the basis of OSMRE's previous interpretation of section 701(28)(A) of the Act. In its place, the Department adopts a new definition of the term "coal preparation." Under the new definition "coal preparation" means the chemical or physical processing and the cleaning, concentrating or other processing or preparation of coal. Facilities which do not separate coal from its impurities will be included in this definition.

Several commenters raised questions as to the coverage of the term "coal preparation" and requested that the Secretary clarify whether facilities engaging solely in coal crushing, screening or sizing which do not separate coal from its impurities are included under the definition of "coal preparation." As stated above in response to comments on the "surface coal mining operations" definition, the Secretary will treat coal processing operations which do not separate coal from its impurities as coal preparation, and the facilities involved will be treated as coal preparation plants.

Commenters felt that the proposed definition was too broad, and would reach too many coal processing facilities, including "noncaptive coal processing plants." They also felt that it would be an excessive regulatory burden for OSMRE.

The District Court ruled that OSMRE's definition was too narrow. OSMRE is now regulating those facilities within the reach of the Court's decision. Some commenters felt that the proposed definition should clarify that coal preparation and coal preparation plants associated with the end use of coal should not be regulated. As discussed above, coal preparation plants associated with the ultimate use or consumption of coal, are not in connection with a mine, and are not regulated surface coal mining operations.

2. Coal Preparation Plant

The Department is revising the definition of "coal preparation plant" in order to track the revised definition of coal preparation discussed above.

Several commenters requested that the Secretary clarify that crushing, screening and sizing were conducted at a coal preparation plant. Since these activities fall within the definition of coal preparation, by definition they are conducted at coal preparation plants.

One commenter suggested modifying the opening sentence of this definition by replacing the phrase ". . . facilities associated with coal preparation activities . . .", with the phrase ". . . facilities at the site where coal preparation activities occur. . .". The Secretary accepts this suggestion. It is logical to specify that facilities must be located at the site of coal preparation activities to be considered part of the coal preparation plant. However, not considering such facilities as being part of the preparation plant does not mean they will be unregulated. Usually, facilities "associated with" coal preparation activities are operated in

support thereof. Typically, such facilities will be resulting from or incident to the coal preparation and will be properly regulated as support facilities; but these facilities should not be considered part of the preparation plant itself. Finally, OSMRE wishes to emphasize that this regulatory change is not intended to require preparation plants to be at or near a mine site to be regulated under this rule.

One commenter stated that coal loadouts should not be considered to be coal preparation plants. A loading facility which is not associated with any other coal processing or preparation operation would not be part of a coal preparation plant. However, loading facilities which are operated as part of coal preparation operations would be part of a coal preparation plant, and thus, be regulated under the Act.

3. Support Facilities

In the interim final rule the Secretary suspended the definition of "support facilities" in order to implement the July 6, 1984 Court decision in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. 1984). The Court ruled that the determination of whether a facility was subject to the Act could not include an element of proximity.

OSMRE received numerous comments on the definition of "support facilities." Nearly every commenter felt that OSMRE should adopt a new definition of that term.

The Secretary, based on these comments, has decided not to finalize the proposed removal of the definition of "support facilities" and to propose a revised definition in a new rulemaking. The suspension of the definition of "support facilities" will continue until a new definition is adopted.

C. Amendment to 30 CFR 785.21: Schedule for Permitting Coal Preparation Plants

Section 785.21 establishes the permitting requirements for coal preparation plants. As proposed, and as promulgated in the interim final rule, it requires any person who operates or intends to operate a coal preparation plant outside the permit area for a specific mine, other than those located at the site of ultimate use, to obtain a permit. To obtain a permit, an applicant must submit a permit application which demonstrates that the plant will comply with 30 CFR Part 827 and must describe the construction, operation, maintenance, and planned removal of such facilities.

The coal preparation plants that are subject to OSMRE's regulations under the District Court's July 6, 1984, opinion and by the amendments contained herein will be required to obtain a permit. In the interim final rule, OSMRE recognized that considerable time may be involved in applying for and obtaining a permit. In this rule, OSMRE has amended § 785.21 by finalizing the addition of new paragraphs (d) and (e) to set out a reasonable schedule for the permitting of such facilities.

Section 785.21(d)(1) imposed an obligation to apply for a permit. Under paragraph (d)(1) any person who planned to operate a coal preparation plant after May 10, 1986 which was not subject to the regulations of 30 CFR Chapter VII prior to July 6, 1984, had to apply for a permit no later than November 10, 1985.

New paragraph (d)(2) contains an important exception to the requirements of paragraph (d)(1). It provides that those States with State programs that have statutory or regulatory prohibitions precluding the issuance of permits to facilities covered by paragraph (d)(1) had to notify OSMRE by December 9, 1985 that a program change is necessary. Nine states notified OSMRE that they needed to change their programs. These States each established a timetable, which has been approved by OSMRE, of the action to be taken in order to adopt appropriate measures and undertake permitting actions for all of the coal preparation plants located within their jurisdiction. Operators in those States must apply for permits in accordance with these timetables.

New paragraph (e) of § 785.21 provides that any person operating a coal preparation plant subject to regulation under the July 6, 1984, decision and not subject to prohibition by 30 CFR 761.11 will be allowed to continue to operate without a permit until May 10, 1986. Such persons will be allowed to operate past the May 10, 1986 if (1) they have timely filed a permit application pursuant to paragraph (d)(1) or pursuant to a State imposed schedule specified in paragraph (d)(2); (2) the regulatory authority has yet to issue or deny the permit; and (3) the person complies with the applicable performance standards of § 827.13 of 30 CFR Chapter VII.

Several commenters asserted that the time frame for implementation of permitting in states with legal impediments to regulating coal processing operations was too lax. These commenters contended that the Secretary must set aside any State law that is determined to be inconsistent with and therefore superseded by the Federal Act. It is unnecessary to do so. OSMRE or the State will enforce interim standards until the State issues or denies permanent program permits for coal preparation plants. Thus, untimely action by a State will not unduly delay the protections of the Act. To speed the amendment of state programs where necessary, the Secretary adopted an approach of notifying all states of the possible requirement to amend their programs through the July 10, 1985 **Federal Register** notice rather than the normal notification process of 30 CFR 732.17. This eased notification and allowed the States the first opportunity to review and revise their programs.

For those states where state law remains inconsistent with these regulations, OSMRE will take necessary action to implement these regulations in a timely manner.

D. Permitting and Performance Standards for Support Facilities

One commenter felt that the time frames were far too short for industry to comply with the interim final regulations as they apply to support facilities previously excluded from permitting requirements. Section 701(28)(A) of the Act identifies those activities which handle coal and are considered "surface coal mining operations." The following paragraph, 701(28)(B), identifies many activities or facilities which, while not handling coal, are resultant from or incident to those identified in paragraph (A) above.

Most activities or facilities covered by paragraph (B) should have been permitted under the previous definition of support facilities. OSMRE or the State Regulatory Authority will determine on a case-by-case basis whether particular facilities, not previously regulated, are support facilities and the time frames for obtaining permits.

E. Amendments to Part 827

Part 827 of 30 CFR sets forth the permanent program performance standards for coal preparation plants not within the permit area for a specific mine. Where permanent program standards are not already applicable to the coal preparation plants subject to regulation under the District Court's decision, Part 827 requires interim performance standards until the permanent program permit for such plant is issued. Such a provision is reasonable because the permanent program performance standards are tied to the issuance of a permit. The interim program performance standards are keyed to direct enforcement not based upon the existence of a permit.

A change has been made from the proposed and interim final rules to

clarify when a facility had to be operating to be subject to the preparation plant performance standards. Section 827.13(a) of the proposed and interim final rule was applicable to "[p]ersons operating coal preparation plants not subject to [30 CFR Chapter VII] before July 6, 1984. . . ." From this language, it was not entirely clear whether the performance standards applied to persons operating preparation plants after September 10, 1985 (the effective date of the interim final rule), after July 6, 1984 (the date of the district court decision in *In Re Permanent II, supra*), after August 3, 1977 (the date of SMCRA enactment), or after some other date. In this final rule, OSMRE modified the language of § 827.13(a) to make it clear that for these facilities not subject to the 30 CFR Chapter VII before July 6, 1984, the applicable performance standards apply to all such preparation plants that operated after July 6, 1984. Under the court decision, any person operating a preparation plant after July 6, 1984 was conducting a surface coal mining operation and subject to SMCRA. Notwithstanding that a plant may have ceased operations prior to September 10, 1985, the person operating the facility subsequent to July 6, 1984 must reclaim the site in accordance with the applicable performance standards.

Because 30 CFR Part 827 is cross referenced in all Federal programs, OSMRE will apply these standards to all coal preparation plants in a Federal program states or on Indian lands, operated after July 6, 1984.

OSMRE considered applying the rule retroactively to facilities which ceased operating before July 6, 1984. OSMRE has concluded that doing so would not further public policy in light of the nature both of the Surface Mining Act and its application prior to the District Court decision. *See Linkletter v. Walker*, 381 U.S. 618, 627 (1964). From an environmental standpoint, the question of retroactivity relates solely to the reclamation of non-waste-generating facilities which ceased operating prior to July 6, 1984. Generally, such reclamation would involve the removal of abandoned structures that likely are not currently causing large amounts of pollution.

In considering whether to assert enforcement authority over all facilities which ever crushed, screened, sized, or otherwise handled coal since the enactment of the Act, OSMRE has carefully examined the regulatory history of this issue. Until the District Court's decision in 1984, operators could have believed that OSMRE's jurisdiction over such facilities was unresolved and a matter in dispute. A number of operators challenged OSMRE's jurisdiction in this regard. For example, during the initial regulatory program, the Interior Board of Surface Mining Appeals ruled that OSMRE's regulations could not be applied to coal processing plants not located "at or near" a mine site. The interpretation of the "at or near" language was not clarified until March 1979, when OSMRE first promulgated its permanent program rules. Still, the Board did not apply the interpretation retroactively. *Western Engineering* 1 IBSMA 202, 211n.9; *Thoroughfare Coal Company*, 3 IBSMA 72 (1981); *Drummond Coal Co.*, 2 IBSMA 96 (1980); *Falcon Coal Company*, 2 IBSMA 406 (1980); *Wolverine Coal Company*, 2 IBSMA 325 (1980); *Roberts Brothers Coal Company*, 2 IBSMA 284 (1980).

Under the first set of permanent regulatory program rules in effect from March 1979 until May 1983, the confusion continued to exist. As mentioned earlier, the 1979 preamble contained a statement that the term "surface coal mining operations" was readily interpreted to include crushing and screening and there was no need to expressly include those activities in the definition. However, there were no provisions in the regulations under which only crushing and screening away from the mine site were clearly regulated. For instance, OSMRE's definition of coal processing plant in that same rule required that such plants separate coal from its impurities. A reader could have concluded that crushing or screening operations away from the mine site were not surface coal mining operations because they were not processing.

The only other regulations that logically would have applied to crushers and screeners would have been the rules governing support facilities (30 CFR 785.21, 816.181 and 817.181 (1979)). In the 1979 preamble, in the same sentence that stated that coal processing plants were regulated no matter where located, OSMRE also stated that all facilities incident to a mine would be regulated when *at or near* the site, 44 FR 15095 (1979). Because the support facility rules were applied on a case-by-case basis (45 FR 14915), not all crushers, screeners and sizers would have been regulated. Thus, the 1979 rules did not clearly require the regulation of off-site crushers and screeners.

Recognizing these problems, OSMRE proposed to clarify its rules and amend the definition of coal processing on June 24, 1980 (45 FR 42334) to remove the requirement for separation of waste. However, that proposal was never finalized. Lastly, during the period from May 5, 1983 until July 6, 1984, OSMRE's rules provided expressly that coal handling facilities which did not separate coal form its impurities would not be regulated.

Based upon this regulatory history, OSMRE has concluded that, although it has jurisdiction to cover facilities operating prior to July 6, 1984, it would be inequitable to do so. Prior to the district court decision, operators of such facilities could have reasonably believed that the program did not apply to them during their period of operation and they could have made business decisions in reliance upon those beliefs. In addition, retroactive application of the rule to facilities that ceased operations prior to July 6, 1984, would require regulatory authorities to locate all such facilities, find the persons responsible for the operations of such facilities, and attempt to compel reclamation at those sites. Requiring such efforts in the face of the settled expectation of persons who have concluded their operations is not warranted in this instance.

III. Related Issues: Applications of Prohibitions in Section 522(e)

One commenter questioned how a facility which, in its view, was not subject to SMCRA prior to July 6, 1984, could be required to have had valid existing rights (VER) of section 522 (e) effective August 3, 1977. OSMRE sympathizes with the commenter's concern. Although section 522(e) of SMCRA became effective August 3, 1977, the date of enactment of the Act, those facilities which were affected by the July 6, 1984, court decision became clearly subject to the section 522(e) prohibitions on July 6, 1984. Prior to that date, a person in good faith could have begun and have expected to operate such a facility without complying with the section 522(e) prohibitions or the need to establish VER. Based upon such settled expectations, OSMRE will not apply the prohibitions to such facilities which existed on or before July 6, 1984.

If a person began operating such a facility in a section 552(e) area after July 6, 1984, or intends to operate there in the future, a VER must be established. For those facilities in section 522(e) areas which ceased operating after July 6, 1984, the existence of VER during their period of operation is largely academic. As discussed in the preceding section such sites must be reclaimed. The reclamation obligation would not be affected by whether VER existed.

If OSMRE receives an inappropriate response to a "ten day notice" regarding such a facility operating within a section 522(e) area, OSMRE will issue a Notice of Violation which would provide an abatement period of approximately 30 days. In that time, an operator must obtain necessary waivers, provide documentation to demonstrate valid existing rights, demonstrate that the operation was existing on the date of enactment or cease operations and initiate reclamation of the site. Any determination of "valid existing rights" made by OSMRE will be consistent with the March 22, 1985, District Court ruling in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. 1985) and the Notice of Suspension published November 10, 1986 (51 FR 41952, 41954).

A commenter asserted that the thirty day period allowed to obtain the necessary waivers or demonstrate Valid Existing Rights (VER) was unduly short. OSMRE rejects this assertion. Operators have been on notice of the need to have VER since July 6, 1984, the date of the court decision and unquestionably since July 10, 1985, the publication date of the interim final rule. Thus no further delay is warranted.

IV. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in § 785.21 have been submitted to the Office of Management and Budget for approval. This final rule contains no information collection requirements that were not covered by the previous approval, however additional respondents will have to collect the information as a result of this rule.

Executive Order 12291

The Department of the Interior (DOI) has examined the final rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis. This rule will impose only minor costs to the coal industry since relatively few operations will be affected. Likewise, the impact upon the consumers of coal will be negligible.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* that the final rule will not have a significant economic impact on a substantial number of small entities. This rule will impact a relatively small number of coal operators the majority of which would not be small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) of the impacts and the cumulative impacts on the human environment of this rulemaking and related rulemakings under the Act. Based on this EA, OSMRE has made a finding that this rule will not significantly adversely affect the quality of the human environment.

Commenters raised questions as to the requirements of NEPA with regard to deletion of the 'support facilities' definition. These commenters contended that the previous EIS's did not discuss the proposed action.

No definition of support facilities was adopted in 1979. Thus, among the alternatives considered in the 1979 EIS, (OSM–EIS–1) and the supplement thereto, was the option of not defining that term. Since the same facilities will be subject to regulation, regardless of definition, there should be no significant environmental impact from this action. However, an environmental assessment has been prepared, and is available from the OSMRE Administrative Record Room, located at Room 5315A, 1100 L Street NW., Washington, DC.

List of Subjects

30 CFR Part 700

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 785

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 827

Coal, Environmental protection, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 700, 701, 785, and 827 are amended as follows:

Dated: April 7, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 700—GENERAL

1. The authority citation for Part 700 continues to read as follows:

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

2. Section 700.5 is amended by revising paragraph (a) of the definition of "surface coal mining operations" to read as follows:

§ 700.5 Definitions.

* * * * *

Surface coal mining operations mean—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountain top removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. *Provided*, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Act; and *Provided further*, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

* * * * *

PART 701—PERMANENT REGULATORY PROGRAM

3. The authority citation for Part 701 continues to read as follows:

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

4. Section 701.5 is amended by revising the definitions of "coal preparation" and "coal preparation plant" to read as follows:

§ 701.5 Definitions.

* * * * *

Coal preparation means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

Coal preparation plant means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not

limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

* * * * *

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

5. The authority citation for Part 785 continues to read as follows:

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

6. Section 785.21 is amended by revising paragraphs (d) and (e) to read as follows:

§ 785.21 Coal preparation plants not located within the permit area of a mine.

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, any person who operates a coal preparation plant beyond May 10, 1986, that was not subject to this chapter before July 6, 1984, shall have applied for a permit no later than November 11, 1985.

(2)(i) State programs that have a statutory or regulatory bar precluding issuance of permits to facilities covered by paragraph (d)(1) of this section shall notify OSMRE not later than November 7, 1985, and shall establish a schedule for actions necessary to allow the permitting of such facilities as soon as practicable. Not later than December 9, 1985, this schedule shall be submitted to OSMRE for approval.

(ii) Any person who operates a coal preparation plant that was not subject to this chapter before July 6, 1984, in a state which submits a schedule in accordance with paragraph (d)(2)(i) of this section shall apply for a permit in accordance with the schedule approved by OSMRE.

(e) Notwithstanding § 773.11 of this chapter and except as prohibited by § 761.11 of this chapter, any person operating a coal preparation plant that was not subject to this chapter before July 6, 1984, may continue to operate without a permit until May 10, 1986, and may continue to operate beyond that date if: (1) A permit application has been timely filed under paragraph (d)(1) of this section or under a State imposed schedule specified in paragraph (d)(2) of this section, (2) the regulatory authority has yet to either issue or deny the permit, and (3) the person complies with the applicable performance standards of Section 827.13 of this chapter.

PART 827—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL PREPARATION PLANTS NOT LOCATED WITHIN THE PERMIT AREA OF A MINE

7. The authority citation for Part 827 continues to read as follows:

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

8. The introductory language of § 827.12 is revised to read as follows:

§ 827.12 Coal preparation plants: Performance standards.

Except as provided in § 827.13 of this part, the construction, operation, maintenance, modification, reclamation, and removal activities at coal preparation plants shall comply with the following:

* * * * *

9. Section 827.13 is revised to read as follows:

§ 827.13 Coal preparation plants: Interim performance standards.

(a) Persons operating or who have operated coal preparation plants after July 6, 1984, which were not subject to this chapter before July 6, 1984, shall comply with the applicable interim or permanent program performance standards of the State in which such plants are located, as follows:

(1) If located in a State in which either interim or permanent program performance standards apply to such plants, the applicable program standards of the State program shall apply;

(2) If located in a State with a State program which must be amended in order to regulate such plants, the interim program performance standards in Subchapter B of this chapter shall apply; and

(3) If located in a State with a Federal program, all such plants shall be subject to the interim program performance standards in Subchapter B of this chapter.

(b) After a person described in paragraph (a) of this section obtains a permit to operate a coal preparation plant, the performance standards specified in § 827.12 shall be applicable to the operation of that plant instead of those specified in paragraph (a) of this section.

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federal register

Monday
May 11, 1987

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890

Medical Devices; Clarifications of Effective Dates of Requirement for Premarket Approval for Class III Devices; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0317]

21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890

Medical Devices; Clarifications of Effective Dates of Requirement for Premarket Approval for Class III Devices

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is clarifying its device classification regulations by codifying a statement on whether FDA has established an effective date by which manufacturers must submit to FDA applications for premarket approval (PMA's) or notices of completion of product development protocols (PDP's) for certain devices already classified into class III (premarket approval). The rule does not contain any new requirements, but only clarifies the applicable statutory requirements that were described in the preambles to the device classification regulations.

EFFECTIVE DATE: June 10, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-80), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Classification of medical devices in commercial distribution is required by the Medical Device Amendments of 1976 (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.). Depending upon the levels of regulatory control necessary to assure the safety and effectiveness of devices, under section 513 of the act (21 U.S.C. 360c), FDA classifies devices into one or more of three regulatory categories: class I (general controls), class II (performance standards), or class III (premarket approval).

FDA's classifications of preamendments devices that were promulgated in regulations published in the **Federal Register** before 1986 are in 21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890. Although FDA provided sufficient explanations in the preambles to these classification regulations when it promulgated them, the agency did not specify in the codified language for a device being classified into class III the effective date, if any, by which a manufacturer must submit to FDA an application for premaket approval for the device or a notice of completion of a PDP for the device. FDA now is clarifying the regulations by inserting in the codified language information regarding whether FDA has established, for each class III device, an effective date of the requirement for premarket approval for class III devices. In most cases, the agency has not established such a requirement. Further, FDA is correcting certain language inconsistencies in several of the general provisions sections of the classification regulations.

This rule does not contain any new requirements, but merely clarifies the applicable statutory requirements that were described in the preambles to certain proposed and final device classification regulations. Because these amendments do not alter the rights and interests of parties and because, for good cause, FDA finds that public procedures are unnecessary, the rule is exempt from the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)).

The agency has determined under 21 CFR 25.24(e)(2) 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.

The agency has examined the economic impact of this rule and has determined that it does not require a regulatory impact analysis, as specified in Executive Order 12291, because the rule does not impose any new requirements. Therefore, the agency concludes that the rule is not a major rule as defined in Executive Order 12291. This final rule, published without a proposed rule, is exempt from the Regulatory Flexibility Act (Pub. L. 96-354). The rule does not impose any paperwork requirements.

List of Subjects

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Part 868

Medical devices.

21 CFR Part 870

Medical devices.

21 CFR Part 876

Medical devices.

21 CFR Part 880

Medical devices.

21 CFR Part 882

Medical devices.

21 CFR Part 884

Medical devices.

21 CFR Part 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890 are amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citations under the sections in 21 CFR Part 864 are removed and the authority citation for 21 CFR Part 864 is revised to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Section 864.1 is revised to read as follows:

§ 864.1 Scope.

(a) This part sets forth the classification of hematology and pathology devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

3. By adding new § 864.3 to subpart A to read as follows:

§ 864.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under

section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

4. Section 864.5220 is amended by adding new paragraph (c) to read as follows:

§ 864.5220 Automated differential cell counter.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 864.3.

5. Section 864.5680 is amended by adding new paragraph (c) to read as follows:

§ 864.5680 Automated heparin analyzer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 864.3.

6. Section 864.7250 is amended by adding new paragraph (c) to read as follows:

§ 864.7250 Erythropoietin assay.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 864.3.

7. Section 864.7300 is amended by adding new paragraph (c) to read as follows:

§ 864.7300 Fibrin monomer paracoagulation test.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 864.3.

8. Section 864.9205 is amended by adding new paragraph (c) to read as follows:

§ 864.9205 Blood and plasma warming device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 864.3.

9. Section 864.9245 is amended by adding new paragraph (c) to read as follows:

§ 864.9245 Automated blood cell separator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 864.3.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

10. The authority citations under the sections in 21 CFR Part 866 are removed and the authority citation for 21 CFR Part 866 is revised to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

11. By revising § 866.1 to read as follows:

§ 866.1 Scope.

(a) This part sets forth the classification of immunology and microbiology devices intended for human use that are in commercial distribution.

(b) The indentification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, an immunology and microbiology device that has two or more types of uses (e.g., used both as a diagnostic device and as a microbiology device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

12. By adding new § 866.3 to Subpart A to read as follows:

§ 866.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (Premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraphs (b) and (c) of this section. Such a regulation under section 515(b) of

the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been sutstantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

(c) A device identified in a regulation in this part that is classified into class III and that is subject to the transitional provisions of section 520(1) of the act is automatically classified by statute into class III and must have an approval under section 515 of the act before being commercially distributed. Accordingly, the regulation for such a class III transitional device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

13. Section 866.2420 is amended by adding new paragraph (c) to read as follows:

§ 866.2420 Oxidase screening test for gonorrhea.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 866.3.

14. Section 866.3290 is amended by adding new paragraph (c) to read as follows:

§ 866.3290 Gonococcal antibody test (GAT).

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 866.3.

15. Section 866.3305 is amended by adding new paragraph (c) to read as follows:

§ 866.3305 Herpes simplex virus serological reagents.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 866.3.

16. Section 866.3510 is amended by adding new paragraph (c) to read as follows:

§ 866.3510 Rubella virus serological reagents.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 866.3.

17. Section 866.6010 is amended by adding new paragraph (c) to read as follows:

§ 866.6010 Carcinoembryonic antigen (CEA) immunological test system as an aid in the detection and management of cancer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 866.3.

PART 868—ANESTHESIOLOGY DEVICES

18. The authority citations under the sections in 21 CFR Part 868 are removed and the authority citation for 21 CFR Part 868 is revised to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

19. By revising § 868.1 to read as follows:

§ 868.1 Scope.

(a) This part sets forth the classification of anesthesiology devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, an anesthesiology device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

20. By adding new § 868.3 to subpart A to read as follows:

§ 868.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order

approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

21. Section 868.1120 is amended by adding new paragraph (c) to read as follows:

§ 868.1120 Indwelling blood oxyhemoglobin concentration analyzer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 866.3.

22. Section 868.1150 is amended by adding new paragraph (c) to read as follows:

§ 868.1150 Indwelling blood carbon dioxide partial pressure ($P_{CO}2$) analyzer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

23. Section 868.1170 is amended by adding new paragraph (c) to read as follows:

§ 868.1170 Indwelling blood hydrogen ion concentration (pH) analyzer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

24. Section 868.1200 is amended by adding new paragraph (c) to read as follows:

§ 868.1200 Indwelling blood oxygen partial pressure (P_O2) analyzer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

25. Section 868.2450 is amended by adding new paragraph (c) to read as follows:

§ 868.2450 Lung water monitor.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

26. Section 868.2500 is amended by adding new paragraph (c) to read as follows:

§ 868.2500 Cutaneous oxygen monitor.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 868.3.

27. Section 868.5400 is amended by adding new paragraph (c) to read as follows:

§ 868.5400 Electroanesthesia apparatus.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

28. Section 868.5610 is amended by adding new paragraph (c) to read as follows:

§ 868.5610 Membrane lung for long-term pulmonary support.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

PART 870—CARDIOVASCULAR DEVICES

29. The authority citations under the sections in 21 CFR Part 870 are removed and the authority citation for 21 CFR part 870 is revised to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

30. By revising § 870.1 to read as follows:

§ 870.1 Scope.

(a) This part sets forth the classification of cardiovascular devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a cardiovascular device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

31. By adding new § 870.3 to subpart A to read as follows:

§ 870.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order

approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

32. Section 870.1025 is amended by adding new paragraph (c) to read as follows:

§ 870.1025 Arrhythmia detector and alarm.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

33. Section 870.1350 is amended by adding new paragraph (c) to read as follows:

§ 870.1350 Catheter balloon repair kit.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

34. Section 870.1360 is amended by adding new paragraph (c) to read as follows:

§ 870.1360 Trace microsphere.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

35. Section 870.3300 is amended by adding new paragraph (c) to read as follows:

§ 870.3300 Arterial embolization device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

36. Section 870.3375 is amended by adding new paragraph (c) to read as follows:

§ 870.3375 Cardiovascular intravascular filter.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

37. Section 870.3450 is amended by adding new paragraph (c) to read as follows:

§ 870.3450 Vascular graft prosthesis of less than 6 millimeters diameter.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

38. Section 870.3535 is amended by adding new paragraph (c) to read as follows:

§ 870.3535 Intra-aortic balloon and control system.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

39. Section 870.3545 is amended by adding new paragraph (c) to read as follows:

§ 870.3545 Ventricular bypass (assist) device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

40. Section 870.3600 is amended by adding new paragraph (c) to read as follows:

§ 870.3600 External pacemaker pulse generator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

41. Section 870.3610 is amended by adding new paragraph (c) to read as follows:

§ 870.3610 Implantable pacemaker pulse generator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

42. Section 870.3620 is amended by adding new paragraph (c) to read as follows:

§ 870.3620 Pacemaker lead adaptor.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

43. Section 870.3680 is amended by adding new paragraph (c) to read as follows:

§ 870.3680 Cardiovascular permanent or temporary pacemaker electrode.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 870.3.

44. Section 870.3700 is amended by adding new paragraph (c) to read as follows:

§ 870.3700 Pacemaker programmers.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

45. Section 870.3710 is amended by adding new paragraph (c) to read as follows:

§ 870.3710 Pacemaker repair or replacement material.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

46. Section 870.3800 is amended by adding new paragraph (c) to read as follows:

§ 870.3800 Annuloplasty ring.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

47. Section 870.3850 is amended by adding new paragraph (c) to read as follows:

§ 870.3850 Carotid sinus nerve stimulator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

48. Section 870.3925 is amended by adding new paragraph (c) to read as follows:

§ 870.3925 Replacement heart valve.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

49. Section 870.4230 is amended by adding new paragraph (c) to read as follows:

§ 870.4230 Cardiopulmonary bypass defoamer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

50. Section 870.4260 is amended by adding new paragraph (c) to read as follows:

§ 870.4260 Cardiopulmonary bypass arterial line blood filter.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

51. Section 870.4320 is amended by adding new paragraph (c) to read as follows:

§ 870.4320 Cardiopulmonary bypass pulsatile flow generator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

52. Section 870.4350 is amended by adding new paragraph (c) to read as follows:

§ 870.4350 Cardiopulmonary bypass oxygenator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

53. Section 870.4360 is amended by adding new paragraph (c) to read as follows:

§ 870.4360 Nonroller-type cardiopulmonary bypass blood pump.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

54. Section 870.5200 is amended by adding new paragraph (c) to read as follows:

§ 870.5200 External cardiac compressor.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

55. Section 870.5225 is amended by adding new paragraph (c) to read as follows:

§ 870.5225 External counter-pulsating device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

56. Section 870.5300 is amended by adding new paragraph (c) to read as follows:

§ 870.5300 DC-defibrillator (including paddles).

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 870.3.

57. Section 870.5550 is amended by adding new paragraph (c) to read as follows:

§ 870.5550 External transcutaneous cardiac pacemaker (noninvasive).

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 870.3.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

58. The authority citations under the sections in 21 CFR Part 876 are removed and the authority citation for Part 876 is revised to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

59. By revising § 876.1 to read as follows:

§ 876.1 Scope.

(a) This part sets forth the classification of gastroenterology-urology devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a gastroenterology-urology device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I to Title 21, unless otherwise noted.

60. By adding new § 876.3 to Subpart A to read as follows:

§ 876.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commerically distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into

commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

61. Section 876.3350 is amended by adding new paragraph (c) to read as follows:

§ 876.3350 Penile inflatable implant.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

62. Section 876.3630 is amended by adding new paragraph (c) to read as follows:

§ 876.3630 Penile rigidity implant.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

63. Section 876.3750 is amended by adding new paragraph (c) to read as follows:

§ 876.3750 Testicular prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

64. Section 876.4480 is amended by adding new paragraph (c) to read as follows:

§ 876.4480 Electrohydraulic lithotriptor.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

65. Section 876.5220 is amended by adding new paragraph (c) to read as follows:

§ 876.5220 Colonic irrigation system.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device intended for the uses described in paragraph (b)(2). See § 876.3.

66. Section 876.5270 is amended by adding new paragraph (c) to read as follows:

§ 876.5270 Implanted electrical urinary continence device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

67. Section 876.5280 is amended by adding new paragraph (c) to read as follows:

§ 876.5280 Implanted mechanical/hydraulic urinary continence device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

68. Section 876.5540 is amended by adding new paragraph (c) to read as follows:

§ 876.5540 Blood access device and accessories.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 876.3.

69. Section 876.5860 is amended by adding new paragraph (c) to read as follows:

§ 876.5860 High permeability hemodialysis system.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

70. Section 876.5870 is amended by adding new paragraph (c) to read as follows:

§ 876.5870 Sorbent hemoperfusion system.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

71. Section 876.5955 is amended by adding new paragraph (c) to read as follows:

§ 876.5955 Peritoneo-venous shunt.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

72. The authority citations under the sections in 21 CFR Part 880 are removed and the authority citation for Part 880 is revised to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

73. By revising § 880.1 to read as follows:

§ 880.1 Scope.

(a) This part sets forth the classification of general hospital and personal use devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a general hospital and personal use device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

74. By adding new § 880.3 to Subpart A to read as follows:

§ 880.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring

completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" devices defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

75. Section 880.5130 is amended by adding new paragraph (c) to read as follows:

§ 880.5130 Infant radiant warmer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 880.3.

76. Section 880.5760 is amended by adding new paragraph (c) to read as follows:

§ 880.5760 Chemical coldpack snakebite kit.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 880.3.

PART 882—NEUROLOGICAL DEVICES

77. The authority citations under 21 CFR Part 882 are removed and the authority citation for 21 CFR Part 882 is revised to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

78. By revising § 882.1 to read as follows:

§ 882.1 Scope.

(a) This part sets forth the classification of neurological devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a neurological device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

79. By adding new § 882.3 to subpart A to read as follows:

§ 882.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

80. Section 882.1790 is amended by adding new paragraph (c) to read as follows:

§ 882.1790 Ocular plethysmograph.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No efective date

has been established of the requirement for premarket approval. See § 882.3.

81. Section 882.1825 is amended by adding new paragraph (c) to read as follows:

§ 882.1825 Rheoencephalograph.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 882.3.

82. Section 882.5150 is amended by adding new paragraph (c) to read as follows:

§ 882.5150 Intravascular occluding catheter.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirements for premarket approval. See § 882.3.

83. Section 882.5800 is amended by adding new paragraph (c) to read as follows:

§ 882.5800 Cranial electrotherapy stimulator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirements for premarket approval. See § 882.3.

84. Section 882.5840 is amended by adding new paragraph (c) to read as follows:

§ 882.5840 Implanted intracerebral/subcortical stimulator for pain relief.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirements for premarket approval. See § 882.3.

85. Section 882.5850 is amended by adding new paragraph (c) to read as follows:

§ 882.5850 Implanted spinal cord stimulator for bladder evacuation.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 882.3.

86. Section 882.5860 is amended by adding new paragraph (c) to read as follows:

§ 882.5860 Implanted neuromuscular stimulator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirements for premarket approval. See § 882.3.

87. Section 882.5940 is amended by adding new paragraph (c) to read as follows:

§ 882.5940 Electroconvulsive therapy device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirements for premarket approval. See § 882.3.

88. Section 882.5950 is amended by adding new paragraph (c) to read as follows:

§ 882.5950 Artificial embolization device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 882.3.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

89. The authority citations under the sections in 21 CFR Part 884 are removed and the authority citation for Part 884 is revised to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

90. By revising § 884.1 to read as follows:

§ 884.1 Scope.

(a) This part sets forth the classification of obstetrical and gynecological devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a obstetrical and gynecological device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

91. By adding new § 884.3 to Subpart A to read as follows:

§ 884.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device

states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

92. Section 884.1060 is amended by adding new paragraph (c) to read as follows:

§ 884.1060 Endometrial aspirator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

93. Section 884.1100 is amended by adding new paragraph (c) to read as follows:

§ 884.1100 Endometrial brush.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

94. Section 884.1185 is amended by adding new paragraph (c) to read as follows:

§ 884.1185 Endometrial washer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

95. Section 884.2050 is amended by adding new paragraph (c) to read as follows:

§ 884.2050 Obstetric data analyzer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

96. Section 884.2620 is amended by adding new paragraph (c) to read as follows:

§ 884.2620 Fetal electroencephalographic monitor.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

97. Section 884.2685 is amended by adding new paragraph (c) to read as follows:

§ 884.2685 Fetal scalp clip electrode and applicator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

98. Section 884.4100 is amended by adding new paragraph (c) to read as follows:

§ 884.4100 Endoscopic electrocautery and accessories.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

99. Section 884.4150 is amended by adding new paragraph (c) to read as follows:

§ 884.4150 Bipolar endoscopic coagulator-cutter and accessories.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

100. Section 884.4250 is amended by adding new paragraph (c) to read as follows:

§ 884.4250 Expandable cervical dilator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

101. Section 884.4270 is amended by adding new paragraph (c) to read as follows:

§ 884.4270 Vibratory cervical dilators.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

102. Section 884.5050 is amended by adding new paragraph (c) to read as follows:

§ 884.5050 Metreurynter-balloon abortion system.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

103. Section 884.5225 is amended by adding new paragraph (c) to read as follows:

§ 884.5225 Abdominal decompression chamber.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

104. Section 884.5380 is amended by adding new paragraph (c) to read as follows:

§ 884.5380 Contraceptive tubal occlusion device (TOD) and introducer.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

105. Section 884.5940 is amended by adding new paragraph (c) to read as follows:

§ 884.5940 Powered vaginal muscle stimulator for therapeutic use.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

PART 890—PHYSICAL MEDICINE DEVICES

106. The authority citations under the sections in 21 CFR Part 890 are removed and the authority citation for 21 CFR Part 890 is revised to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

107. By revising § 890.1 to read as follows:

§ 890.1 Scope.

(a) This part sets forth the classification of physical medicine device intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a physical medicine device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are the Chapter I of Title 21, unless otherwise noted.

108. By adding new § 890.3 to Subpart A to read as follows:

§ 890.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under

section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application of premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, includiing a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commerically distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

109. Section 890.3610 is amended by adding new paragraph (c) to read as follows:

§ 890.3610 Rigid pneumatic structure orthosis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 890.3.

110. Section 890.3890 is amended by adding new paragraph (c) to read as follows:

§ 890.3890 Stair-climbing wheelchair.

* * * * *

(c) *Date PMA or notice or completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 890.3.

111. Section 890.5275 is amended by adding new paragraph (c) to read as follows:

§ 890.5275 Microwave diathermy.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragrah (b)(1). See § 890.3.

112. Section 890.5290 is amended by adding new paragraph (c) to read as follows:

§ 890.5290 Shortwave diathermy.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 890.3.

113. Section 890.5300 is amended by adding new paragraph (c) to read as follows:

§ 890.5300 Ultrasonic diathermy.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 890.3.

114. Section 890.5525 is amended by adding new paragraph (c) to read as follows:

§ 890.5525 Iontophoresis device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 890.3.

115. Section 890.5860 is amended by adding new paragraph (c) to read as follows:

§ 890.5860 Ultrasound and muscle stimulator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effecttive date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 890.3.

Dated: April 17, 1987.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 87-10472 Filed 5-8-87; 8:45 am]

BILLING CODE 4160-01-M

federal register

Monday
May 11, 1987

Part VIII

Department of Education

34 CFR Part 315

Program for Severely Handicapped Children; Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 315

Program for Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations under the former Auxiliary Activities program to conform to the changes made in section 624 of the Education of the Handicapped Act (EHA) by Pub. L. 99–457. As a result of these changes, the program now only applies to severely handicapped children and youth and no longer applies to all handicapped children covered under Part C of the Act. In addition, new weighted criteria have been added for use in evaluation of applications.

DATES: Comments must be received on or before June 25, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Dr. Thomas R. Behrens, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4605), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson. Telephone: (202) 732–1161.

SUPPLEMENTARY INFORMATION: Previously, section 624 contained the general research, development or demonstration, training, and dissemination authority for all programs covered by Part C of the EHA. Programs covered under Part C included Regional Resource Centers, Services for Deaf-Blind Children and Youth, Early Education for Handicapped Children, Postsecondary Education Programs, and Secondary Education and Transitional Services for Handicapped Youth. Pub. L. 99–457 limits the authority under section 624 solely to programs for severely handicapped children. The regulations have been amended to reflect this change.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The application procedures and other requirements in the proposed regulations are minimal and will not place undue burdens on small entities. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Section 315.32 contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4615, Switzer Building, 330 C Street, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 315

Education,
Education of handicapped,
Education—research,
Grants program—education,
Teachers.

(Catalog of Federal Domestic Assistance Number 84.086, Program for Severely Handicapped Children)

Dated: April 13, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 315 of Title 34 of the Code of Federal Regulations as follows:

The authority citation for Part 315 is revised to read as follows:

Authority: 20 U.S.C. 1424.

1. The title of Part 315 is revised to read as follows:

PART 315—PROGRAM FOR SEVERELY HANDICAPPED CHILDREN

2. The heading for § 315.1 is revised to read as follows:

§ 315.1 What is the Program for Severely Handicapped Children?

* * * * *

3. Section 315.1 is further amended by removing "including those who are severely handicapped".

§§ 315.1, 315.10, 315.11, 315.12 and 315.13 [Amended]

4. In §§ 315.1, 315.10, 315.11, 315.12, and 315.13, the word "severely" is added preceding the words "handicapped children and youth".

5. Section 315.12(a) is amended by adding "to meet the needs of severely handicapped children and youth" following the word "activities".

6. In § 315.12(a)(4), "particiate" is corrected to read "participate".

7. In § 315.12(b)(2), "excepted" is corrected to read "expected".

8. Section 315.13 is amended by revising paragraph (a), redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c), to read as follows:

§ 315.13 What types of training activities are considered for support by the Secretary under this part?

* * * * *

(a) *Training.* Training of professional and allied personnel may include staff meetings, seminars, workshops, demonstrations, and related activities.

* * * * *

(c) *Stipends.* The Secretary, on a case-by-case basis, may authorize the payment of stipends for inservice training in an amount the Secretary determines appropriate for a particular training activity.

* * * * *

§ 315.14 [Amended]

9. In § 315.14, the word "severely" is added preceding the word "handicapped".

§ 315.30 [Amended]

10. Section 315.30(a) is amended by removing "in conjunction with one of the authorities in Part C".

11. Section 315.31 is redesignated as § 315.32 and revised, and a new § 315.31 is added to read as follows:

§ 315.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 315.32 or 315.33.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1424)

§ 315.32 What are the selection criteria used to award a research grant?

The Secretary uses the following criteria to evaluate an application for a research project described in § 315.11:

(a) *Importance and expected impact of the research.* (20 points) The Secretary reviews each application to determine the extent to which the project will develop new knowledge in understanding and effectively meeting the needs of severely handicapped children and youth, including the extent to which—

(1) The programmatic research areas proposed by the applicant represent critical areas of investigation, or problems whose solution would have greatest impact on improving services to severely handicapped children and youth; and

(2) The Specific questions to be addressed in the project are likely to generate knowledge needed for bringing about a major change in understanding of the topical area.'

(b) *Technical soundness of the project.* (15 points)

(1) The Secretary reviews each application to determine the technical soundness of the research plan, including—

(i) The design;

(ii) The proposed sample;

(iii) Instrumentation; and

(iv) Data analysis procedures.

(2) The Secretary also reviews each application for the relevance of its proposed training efforts, including—

(i) Strategies for provision of training; and

(ii) Relationships between the applicant, other organizations or agencies providing training in coordination with the applicant, and trainees receiving training from the applicant.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in conducting, documenting, and applying research pertaining to severely handicapped children and youth;

(ii) Awareness of relevant research findings and demonstration project results pertaining to other handicapped children and youth and the potential for use of the findings and results with severely handicapped children and youth; and

(iii) Experience in communicating research findings to service providers of severely handicapped children and youth and in assisting these providers with effective application of the findings.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Provides a clear description of the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

(Authority: 20 U.S.C. 1424)

12. A new § 315.33 is added to read as follows:

§ 315.33 What are the selection criteria used to award a grant for a demonstration, training, or dissemination project?

The Secretary uses the following criteria to evaluate an application for a demonstration project under § 315.12 and a training project under § 315.13. The Secretary also uses these criteria to evaluate a dissemination project under § 315.14, except that a maximum of 30 points may be given for criterion (b) (plan of operation) and no points are provided for criterion (g) (dissemination plan).

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to severely handicapped children and youth, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and

related service needs of severely handicapped children and youth served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to severely handicapped children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

(Authority: 20 U.S.C. 1424)

13. A new § 315.34 is added to read as follows:

§ 315.34 What other factors are considered by the Secretary in making a grant?

To the extent feasible, the Secretary supports activities that are geographically dispersed throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1424)

[FR Doc. 87-10644 Filed 5-8-87; 8:45 am]

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Monday, May 11, 1987

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CFR CHECKLIST

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1200-End, 6 (6 Reserved)	9.50	Jan. 1, 1987
7 Parts:		
0-45	25.00	Jan. 1, 1987
46-51	16.00	Jan. 1, 1987
52	23.00	Jan. 1, 1987
53-209	18.00	Jan. 1, 1987
210-299	22.00	Jan. 1, 1987
300-399	10.00	Jan. 1, 1987
400-699	15.00	Jan. 1, 1987
700-899	22.00	Jan. 1, 1987
900-999	26.00	Jan. 1, 1987
1000-1059	15.00	Jan. 1, 1987
1060-1119	13.00	Jan. 1, 1987
1120-1199	11.00	Jan. 1, 1987
1200-1499	18.00	Jan. 1, 1987
1500-1899	9.50	Jan. 1, 1987
1900-1944	25.00	Jan. 1, 1987
*1945-End	26.00	Jan. 1, 1987
8	9.50	Jan. 1, 1987
9 Parts:		
1-199	18.00	Jan. 1, 1987
200-End	16.00	Jan. 1, 1987
10 Parts:		
0-199	29.00	Jan. 1, 1987
200-399	13.00	Jan. 1, 1987
400-499	14.00	Jan. 1, 1987
500-End	24.00	Jan. 1, 1987
11	7.00	Jan. 1, 1986
12 Parts:		
1-199	11.00	Jan. 1, 1987
200-299	27.00	Jan. 1, 1987
300-499	13.00	Jan. 1, 1987
*500-End	27.00	Jan. 1, 1987
13	19.00	Jan. 1, 1987
14 Parts:		
1-59	21.00	Jan. 1, 1987
60-139	19.00	Jan. 1, 1987
140-199	9.50	Jan. 1, 1987
200-1199	14.00	Jan. 1, 1986
1200-End	11.00	Jan. 1, 1987
15 Parts:		
0-299	10.00	Jan. 1, 1987
300-399	20.00	Jan. 1, 1987
400-End	14.00	Jan. 1, 1987
16 Parts:		
0-149	12.00	Jan. 1, 1987
150-999	13.00	Jan. 1, 1987
1000-End	19.00	Jan. 1, 1987
17 Parts:		
1-239	26.00	Apr. 1, 1986
240-End	19.00	Apr. 1, 1986
18 Parts:		
1-149	15.00	Apr. 1, 1986
150-399	25.00	Apr. 1, 1986
400-End	6.50	Apr. 1, 1986
19	29.00	Apr. 1, 1986
20 Parts:		
1-399	10.00	Apr. 1, 1986
400-499	22.00	Apr. 1, 1986
500-End	23.00	Apr. 1, 1986
21 Parts:		
1-99	12.00	Apr. 1, 1986
100-169	14.00	Apr. 1, 1986
170-199	16.00	Apr. 1, 1986
*200-299	5.50	Apr. 1, 1987
300-499	25.00	Apr. 1, 1986
500-599	21.00	Apr. 1, 1986
*600-799	7.00	Apr. 1, 1987
*800-1299	13.00	Apr. 1, 1987
1300-End	6.50	Apr. 1, 1986
22	28.00	Apr. 1, 1986
23	17.00	Apr. 1, 1986
24 Parts:		
0-199	15.00	Apr. 1, 1986
200-499	24.00	Apr. 1, 1986
500-699	8.50	Apr. 1, 1986
700-1699	17.00	Apr. 1, 1986
1700-End	12.00	Apr. 1, 1986
25	24.00	Apr. 1, 1986
26 Parts:		
§§ 1.0-1.169	29.00	Apr. 1, 1986
§§ 1.170-1.300	16.00	Apr. 1, 1986
§§ 1.301-1.400	13.00	Apr. 1, 1986
§§ 1.401-1.500	20.00	Apr. 1, 1986
§§ 1.501-1.640	15.00	Apr. 1, 1986
§§ 1.641-1.850	16.00	Apr. 1, 1986
§§ 1.851-1.1200	29.00	Apr. 1, 1986
§§ 1.1201-End	29.00	Apr. 1, 1986
2-29	19.00	Apr. 1, 1986
30-39	13.00	Apr. 1, 1986
40-299	25.00	Apr. 1, 1986
300-499	14.00	Apr. 1, 1986
500-599	8.00	[2] Apr. 1, 1980
600-End	4.75	Apr. 1, 1986
27 Parts:		
1-199	20.00	Apr. 1, 1986
200-End	14.00	Apr. 1, 1986
28	21.00	July 1, 1986
29 Parts:		
0-99	16.00	July 1, 1986
100-499	7.00	July 1, 1986
500-899	24.00	July 1, 1986
900-1899	9.00	July 1, 1986
1900-1910	27.00	July 1, 1986
1911-1919	5.50	[3] July 1, 1984
1920-End	29.00	July 1, 1986
30 Parts:		
0-199	16.00	[4] July 1, 1985
200-699	8.50	July 1, 1986
700-End	17.00	July 1, 1986
31 Parts:		
0-199	11.00	July 1, 1986
200-End	16.00	July 1, 1986

Title	Price	Revision Date
32 Parts:		
1–39, Vol. I	15.00	[5] July 1, 1984
1–39, Vol. II	19.00	[5] July 1, 1984
1–39, Vol. III	18.00	[5] July 1, 1984
1–189	17.00	July 1, 1986
190–399	23.00	July 1, 1986
400–629	21.00	July 1, 1986
630–699	13.00	July 1, 1986
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800–End	16.00	July 1, 1986
33 Parts:		
1–199	27.00	July 1, 1986
200–End	18.00	July 1, 1986
34 Parts:		
1–299	20.00	July 1, 1986
300–399	11.00	July 1, 1986
400–End	25.00	July 1, 1986
35	9.50	July 1, 1986
36 Parts:		
1–199	12.00	July 1, 1986
200–End	19.00	July 1, 1986
37	12.00	July 1, 1986
38 Parts:		
0–17	21.00	July 1, 1986
18–End	15.00	July 1, 1986
39	12.00	July 1, 1986
40 Parts:		
1–51	21.00	July 1, 1986
52	27.00	July 1, 1986
53–60	23.00	July 1, 1986
61–80	10.00	July 1, 1986
81–99	25.00	July 1, 1986
100–149	23.00	July 1, 1986
150–189	21.00	July 1, 1986
190–399	27.00	July 1, 1986
400–424	22.00	July 1, 1986
425–699	24.00	July 1, 1986
700–End	24.00	July 1, 1986
41 Chapters:		
1, 1–1 to 1–10	13.00	[6] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[6] July 1, 1984
3–6	14.00	[6] July 1, 1984
7	6.00	[6] July 1, 1984
8	4.50	[6] July 1, 1984
9	13.00	[6] July 1, 1984
10–17	9.50	[6] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[6] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[6] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[6] July 1, 1984
19–100	13.00	[6] July 1, 1984
1–100	9.50	July 1, 1986
101	23.00	July 1, 1986
102–200	12.00	July 1, 1986
201–End	7.50	July 1, 1986
42 Parts:		
1–60	15.00	Oct. 1, 1986
61–399	10.00	Oct. 1, 1986
400–429	20.00	Oct. 1, 1986
430–End	15.00	Oct. 1, 1986
43 Parts:		
1–999	14.00	Oct. 1, 1986
1000–3999	24.00	Oct. 1, 1986
4000–End	11.00	Oct. 1, 1986

Title	Price	Revision Date
44	17.00	Oct. 1, 1986
45 Parts:		
1–199	13.00	Oct. 1, 1986
200–499	9.00	Oct. 1, 1986
500–1199	18.00	Oct. 1, 1986
1200–End	13.00	Oct. 1, 1986
46 Parts:		
1–40	13.00	Oct. 1, 1986
41–69	13.00	Oct. 1, 1986
70–89	7.00	Oct. 1, 1986
90–139	11.00	Oct. 1, 1986
140–155	8.50	[7] Oct. 1, 1985
156–165	14.00	Oct. 1, 1986
166–199	13.00	Oct. 1, 1986
200–499	19.00	Oct. 1, 1986
500–End	9.50	Oct. 1, 1986
47 Parts:		
0–19	17.00	Oct. 1, 1986
20–39	18.00	Oct. 1, 1986
40–69	11.00	Oct. 1, 1986
70–79	17.00	Oct. 1, 1986
80–End	20.00	Oct. 1, 1986
48 Chapters:		
1 (Parts 1–51)	21.00	Oct. 1, 1986
1 (Parts 52–99)	16.00	Oct. 1, 1986
2	27.00	Dec. 31, 1986
3–6	17.00	Oct. 1, 1986
7–14	23.00	Oct. 1, 1986
15–End	22.00	Oct. 1, 1986
49 Parts:		
1–99	10.00	Oct. 1, 1986
100–177	24.00	Oct. 1, 1986
178–199	19.00	Oct. 1, 1986
200–399	17.00	Oct. 1, 1986
400–999	21.00	Oct. 1, 1986
1000–1199	17.00	Oct. 1, 1986
1200–End	17.00	Oct. 1, 1986
50 Parts:		
1–199	15.00	Oct. 1, 1986
200–End	25.00	Oct. 1, 1986
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.